



THE  
NEW CIVIL COURT MANUAL,  
BEING  
EDITION OF 1908  
*AS AMENDED UP TO DATE,*  
IN THREE VOLUMES.

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VOLUME I.:  
MISCELLANEOUS ACTS.

A TO L.

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COMPILED  
BY  
D. E. CRANENBURGH,  
*PLEADER.*

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## PREFACE.

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THIS Edition of the Civil Court Manual has been published in three pocket volumes :

Volumes I. and II. contain such of the Acts of the Governor-General in Council as are most frequently referred to, arranged in alphabetical order.

Volume III. contains the Code of Civil Procedure.

In all the Acts contained in this edition, every amendment made up to date of publication has been carefully embodied in its proper place.

Considering that the amendments recently made in most of the Acts herein contained are numerous and important, the work should prove very useful and reliable.

D. E. CRANENBURGH.

*Aug. 6, 1901.*



# THE NEW CIVIL COURT MANUAL

IN THREE HANDY VOLUMES.

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(4) "Indian Christian" means a Native of India who is or in good faith claims to be of unmixed Asiatic descent, and who professes any form of the Christian religion :

(5) "Letters of Administration" includes any letters of administration, whether general or with a copy of the will annexed, or limited in time or otherwise :

(6) "next-of-kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased :

(7) "Official Gazette" means, in the case of the Presidency of Bengal, the Gazette of India, and in the cases of the Presidencies of Madras and Bombay, the Fort St. George and Bombay Government Gazettes, respectively :

(8) "Prescribed" means prescribed by rules under this Act :

(9) (a) "Presidency of Bengal" includes the territories for the time being under the Government of the Governor of Fort William in Bengal in Council, the United Provinces of Agra and Oudh, the provinces of the Punjab, Burma, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, the province of Delhi, Ajmer and Merwara, the Andaman and Nicobar Islands, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the Gazette of India, direct :

(b) "Presidency of Bombay" includes the territories for the time being under the government of the Governor of Bombay in Council, the Province of British Baluchistan, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the Gazette of India, direct :

(c) "Presidency of Madras" includes the territories for the time being under the government of the Governor of Fort St. George in Council, the province of Coorg, and such of the territories of Native States aforesaid as the Governor General in Council may, by notification in the Gazette of India, direct.

(10) "Presidency" means any of the Presidencies mentioned in clause (9).

## PART II.

### THE OFFICE OF ADMINISTRATOR GENERAL.

Appointment and designation of the Administrators General in the three Presidencies.

3. (1) In each of the Presidencies of Bengal, Madras and Bombay, the Government shall appoint an Administrator General.

(2) No person shall be appointed to the office of Administrator General of any of the said Presidencies who is not—

(a) a Barrister; or

(b) an Advocate, Attorney or Vakil enrolled by a High Court; or

(c) a person holding the office of Deputy Administrator General at the commencement of this Act.

(3) The said Administrators General shall be called respectively the Administrator General of Bengal, the Administrator General of Madras, and the Administrator General of Bombay.

4. The Government may appoint a Deputy or Deputies to

assist the Administrator General; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Administrator General, be competent to discharge any of the duties and to exercise any of the powers of the Administrator General, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator General.

5. The Administrator General shall be a corporation sole by

the name of the Administrator General of the Presidency for which he is appointed and, as such Administrator General, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

## PART III.

## RIGHTS, POWERS, DUTIES AND LIABILITIES OF THE ADMINISTRATOR GENERAL.

*(a) Grants of Letters of Administration and Probate.*

6. So far as regards the Administrator General of any Presidency, the High Court at the

As regards Administrator General, High Court at Presidency-town to be deemed a Court of competent jurisdiction for the purpose of granting probate or letters of administration.

Presidency, the High Court at the Presidency-town shall be deemed to be a Court of competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force wheresoever

within the Presidency the estate to be administered is situate.

7. Any letters of administration, which are granted after the

Administrator-General entitled to letters of administration, unless granted to next-of-kin.

commencement of this Act by the High Court at any Presidency-town, shall be granted to the Administrator-General of the Presidency, unless they are granted

to the next-of-kin of the deceased.

8. The Administrator-General of the Presidency shall be

Administrator-General entitled to letters of administration in preference to creditor, non-universal legatee or friend.

deemed by all the Courts in the Presidency to have a right to letters of administration other than letters *pendente lite* in preference to that of—

(a) a creditor; or

(b) a legatee other than an universal legatee; or

(c) a friend of the deceased.

When Administrator General is to administer estates of persons other than exempted persons.

9. If any person, not being an exempted person, has died leaving within any Presidency assets exceeding the value of one thousand rupees,

and if no person to whom any Court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such Presidency for probate of his will, or for letters of administration of his estate,

the Administrator-General of the Presidency in which such assets are snall, subject to any rules made by the Government, within a reasonable time after he has had notice of the death of

such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court at the Presidency-town letters of administration of the estate of such person.

**10.** Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court at a Presidency-town, the Court, on being satisfied that danger is to be apprehended of misappropriation, deterioration or waste of such assets unless letters of administration of the estate of such person are granted, may upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, make an order, upon such terms as to indemnifying the Administrator-General against costs and other expenses as the Court thinks fit, directing the Administrator-General to apply for letters of administration of the estate of such person :

Provided that, in the case of an application being made under this section for letters of administration of the estate of an exempted person, the Court may refuse to grant letters of administration, if it is satisfied that such grant is unnecessary for the protection of the assets; and in such case the Court shall make such order as to the costs of the application as it thinks fit.

**Power to direct Administrator-General to collect and hold assets until right of succession or administration is determined.**

**11. (1)** Whenever any person has died leaving assets within the local limits of the ordinary original civil jurisdiction of any of the said High Courts,

and such Court is satisfied that there is no person immediately available, who is legally entitled to the succession to such assets, or that danger is to be apprehended of misappropriation, deterioration or waste of such assets, before it can be determined who may be legally entitled to the succession thereto, or whether the Administrator-General is entitled to letters of administration of the estate of such deceased person,

the Court may, upon the application of the Administrator-General or of any person interested in such assets, or in the due administration thereof, forthwith direct the Administrator-General to collect and take possession of such assets, and to hold, deposit, realize, sell or invest the same according to the directions of the

Court, and in default of any such directions according to the provisions of this Act so far as the same are applicable to such assets.

(a) Any order of the Court made under the provisions of this section shall entitle the Administrator-general,

(a) to maintain any suit or proceeding for the recovery of such assets, and

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person, and

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act, and to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator General under sections 9, 10 and 11.

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9, section 10, or section 11, any person appears and establishes his claim—

(a) to probate of the will of the deceased; or

(b) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

the Court shall grant probate of the will or letters of administration accordingly, and shall award to the Administrator-General the costs of any proceedings taken by him, under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

13. If, in the course of proceedings to obtain letters of ad-

Grant of administration to Administrator General in certain cases. ministration under the provisions of section 9, section 10 or section 11, no person appears and establishes his claim to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased, within such period as to the Court seems reasonable,

or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law,

the Court may grant letters of administration to the Administrator General.

14. Nothing in this Act shall be deemed to preclude the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.
- Administrator General not precluded from applying for letters within one month after death.

(b) *Estates of Persons subject to the Army Act.*

15. Nothing in this Act shall be deemed to affect the provisions of the Regimental Debts Act,\* 1883.
- Act not to affect Regimental Debts Act, 1893.

16. It shall not be necessary for the Administrator-General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Regimental Debts Act,\* 1893, if the value of such estate does not on the date when such administration is committed to him exceed rupees one thousand, but he shall have the same power in regard to such estate as he would have had if letters of administration had been granted to him.
- Letters of administration not necessary in respect of small estates administered by Administrator General in accordance with the Regimental Debts Act, 1893.

17. If the Administrator-General applies, in accordance with the provisions of the Regimental Debts Act,\* 1893, for letters of administration of the estate of any person subject to the Army Act, the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Regimental Debts Act, 1893.
- Power to grant Administrator-General letters limited to purpose of dealing with assets in accordance with the Regimental Debts Act, 1893.

(c) *Revocation of Grants.*

18. If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto establishes to the satisfaction of the Court
- Recall of Administrator General's administration, and grant of probate, etc., to executor or next-of-kin.

a claim to probate of a will or to letters of administration in preference to the Administrator-General, any letters of administration granted in accordance with the provisions of this Act to the Administrator-General may be revoked, and probate or letters of administration may be granted to such executor or next-of-kin as the case may be :

Provided that no letters of administration granted to the Administrator-General shall be revoked for the cause aforesaid, except in cases in which a will of the deceased is proved in the Presidency, unless the application for that purpose is made within six months after the grant to the Administrator-General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

19. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator-General out of the estate :

Cost of obtaining administration, etc., may, on revocation, be ordered to be paid to Administrator-General out of assets.

Provided that nothing in this section shall affect the provisions of clause (c) of sub-section (2) of section 11.

20. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void :

After revocation, letters granted to Administrator-General to be deemed as to him to have been voidable only.

Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the

will, or to cause the letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

**21.** If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will, or upon the grant of letters of administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Administrator-General in pursuance of such letters of administration, prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed, shall be deemed valid notwithstanding such revocation.

*(d) General.*

**22.** Whenever any Administrator-General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant of such letters states,

- (i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner,
- (ii) the names and addresses of the surviving next-of-kin of the deceased if known,
- (iii) the particulars and value of the assets likely to come into the hands of the petitioner,
- (iv) particulars of the liabilities of the estate if known.

**23.** (1) All probates or letters of administration granted to any Administrator-General shall be granted to him by that name, and all probates or letters of administration heretofore granted to the Ecclesiastical Registrar, or to the Administrator-General of any Presidency shall authorise the Administrator-General of the same Presidency to act as executor or administrator, as the case may be, of the estate to which such probate or letters relate.

(2) All probates and letters of administration granted to the Ecclesiastical Registrar of any of the late Supreme Courts shall have the same effect in all respects as to any act hereafter done or



required to be done under this Act as if they had been granted to the Administrator-General.

**24.** Probate or letters of administration granted by the High Court at any Presidency-town to the Administrator-General of any Presidency shall have effect over all the assets of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General:

Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout one or more of the other Presidencies.

Whenever a grant is made by a High Court to the Administrator-General with such effect as last aforesaid, the Court shall send to the other High Courts a certificate that such grant has been made, and such certificate shall be filed by the Courts receiving the same.

**25.** (1) Any private executor or administrator may, with the previous consent of the Administrator-General of the Presidency in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the official Gazette, transfer the assets of the estate vested in him by virtue of such probate or letters to the Administrator-General by that name or any other sufficient description.

(2) As from the date of such transfer the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

**26.** (1) When the Administrator-General has given the prescribed notice for creditors and others to send in to him their claims against the

Distribution of assets.

estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator-General shall affect him unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator-General and the date of the final decision of the Administrator-General on such claim shall be excluded.

**27. (1)** When the Administrator-General has, so far as may be, discharged all the liabilities of an administered by him, he shall notify the fact in the official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

Appointment of Official Trustee as trustee of assets after completion of administration.

(2) Upon such appointment such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913, and shall be held by him upon the same trusts as the same were held immediately before such appointment.

**28. (1)** The High Court at the Presidency-town may, on application made to it, give to the Administrator-General of the Presidency any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

Power for High Court to give directions regarding administration of estate.

(2) Applications under sub-section (1) may be made by the Administrator General or any person interested in the assets or in the due administration thereof.

**29. (1)** No Administrator General shall be required by any Court to enter into any administration-bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

No security nor oath to be required from Administrator General.

(2) No Administrator General or Deputy Administrator General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within the Administrator General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

Manner in which petitions to be verified by Administrator General and his Deputy.

(3) The entry of the Administrator General by that name in the books of a Company shall not constitute notice of a trust, and a Company shall not be entitled to object to enter the name of the Administrator General on its register by reason only that the Administrator General is a corporation and in dealing with assets the fact that the person dealt with is the Administrator General shall not of itself constitute notice of a trust.

Entry of Administrator-General not to constitute notice of a trust.

**30.** The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath (which he is hereby authorised to administer) any person who is willing to be so examined by him regarding such question.

Power to examine on oath.

### *(e) Grant of Certificates.*

**31.** Whenever any person has died leaving assets within any Presidency, and the Administrator General of such Presidency is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank, or in any Provident Fund to which the provisions of the Provident Funds Act,\* 1897, apply, did not at the

In what case Administrator General may grant certificate.

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\* Act IX. of 1897.

date of death exceed in the whole one thousand rupees—in value, he may, after the lapse of one month from the death if he thinks fit, or before the lapse of the said month if he is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased, grant to any person, claiming otherwise than as a creditor to be interested in such assets, or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased, within the Presidency to a value not exceeding in the whole one thousand rupees:

Provided that no certificate shall be granted under this section—

- (i) where probate of the deceased's will or letters of administration of his estate has or have been granted, or
- (ii) in respect of any sum of money deposited in a Government Savings Bank or in any Provident Fund to which the provisions of the Provident Funds Act,\* 1897, apply.

**32.** If, in cases falling within section 31, no person claiming Grant of certificate to to be interested otherwise than as a creditors and power to take creditor in such assets or in the due charge of certain estates. administration thereof obtains, within three months of the death of the deceased a certificate from the Administrator General under the same section, or probate of a will or letters of administration of the estate of the deceased, and such deceased was not an exempted person, or was an exempted person who has left assets within the ordinary original civil jurisdiction of the High Court, or within any area notified by the Government in this behalf in the official Gazette, the Administrator General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him;

and if he neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor,

and such certificate shall have the same effect as a certificate granted under the provisions of section 31, and shall be subject to all the provisions of this Act which are applicable to such certificate;

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\* Act IX. of 1897.

Provided that the Administrator General may, before granting such certificate, if he thinks fit, require the creditor to give reasonable security for the due administration of the estate of the deceased.

**33.** The Administrator General shall not be bound to grant any certificate under section 31 or section 32, unless he is satisfied of the title of the claimant and of the value of the assets left by the deceased within the presidency, either by the oath of the claimant, or by such other evidence as he requires.

**34.** The holder of a certificate granted in accordance with the provisions of section 31 or section 32 shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him:

Provided that nothing in this section shall be deemed to require any person holding such certificate,

(a) to file accounts or inventories of the assets of the deceased before any Court or other authority, or

(b) save as provided in section 32 to give any bond for the due administration of the estate.

**35.** The Administrator General may revoke a certificate granted under the provisions of section 31 or section 32 on any of the following grounds, namely:—

(i) that the certificate was obtained by fraud or misrepresentation made to him,

(ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

**36.** (1) When a certificate is revoked in accordance with the provisions of section 35, the holder thereof shall, on the requisition of the Administrator General, deliver it up to such Administrator General, but shall not be entitled to the refund of any fee paid thereon.

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment.

ment which may extend to three months, or, with fine which may extend to one thousand rupees, or with both.

**37.** The Administrator General shall not be bound to take out

Administrator General not bound to take out administration on account of assets for which he has granted certificate.

letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate, under section 31 or section 32, but he may do so if he revokes such certificate under section 35 or ascertains that the value of the estate exceeded one thousand rupees.

**38.** Where a person not having his domicile in British India

Transfer of certain assets from British India to executor or administrator in country of domicile for distribution.

has died leaving assets in any Presidency and in the country in which he had his domicile at the time of his death, and proceedings for the administration of his estate with respect to assets in any such Presidency have been taken under section 31 or section 32, and there has been a grant of administration in the country of domicile with respect to the assets in that country,

the holder of the certificate granted under section 31 or section 32, or the Administrator General, as the case may be, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he has notice of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

*(f) Liability.*

**39. (1)** The revenues of the Government of India shall be

Liability of Government.

liable to make good all sums required to discharge any liability which the Administrator General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator General nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by the exercise of reasonable diligence have averted, and in either of those cases the Administrator General shall not, nor shall the revenues of the Government of India, be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the Government of India or the Administrator General liable for anything done before the commencement of this Act, by or under the authority of the Administrator General.

40. (1) If any suit be brought by a creditor against any Creditors' suits against Administrator General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator General, stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator General was reasonably entitled to require.

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

41. Nothing in section 80 of the Code of Civil Procedure,\* Notice of suit not required 1908, shall apply to any suit against the Administrator General in which no relief is claimed against him personally.

## PART IV.

### FEES.

42. (1) There shall be charged in respect of the duties of the Administrator General such fees, whether Fees. by way of percentage or otherwise, as may be prescribed by the Government:

Provided that, in the case of any estate, the administration of which has been committed to the Administrator General before the commencement of this Act, the fees prescribed under this section shall not exceed the fees leviable in respect of such estate under the Administrator General's Act, 1874,† as subsequently amended:

Provided further that, in respect of the duties of the Administrator General under the Regimental Debts Act,‡ 1893, the fees prescribed in this section shall be determined in accordance with the provisions of that Act.

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\* Act V. of 1908. † Act II. of 1874. ‡ 55 & 56 Vict., c. 57.

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may determine to be required to insure the revenues of the Government of India against loss under this Act).

**43. (1)** Any expenses which might be retained or paid out of any estate in the charge of the Administrator General, if he were a private administrator of such estate, shall be so retained or paid and the fees prescribed under section 42 shall be retained or paid in like manner as and in addition to such expenses.

(2) The Administrator General shall transfer and pay to such authority, in such manner and at such time as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government of India.

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## PART V.

### AUDIT OF THE ADMINISTRATOR GENERAL'S ACCOUNTS.

**44.** The accounts of every Administrator General shall be audited at least once annually, and at any other time if the Government so direct, by the prescribed person and in the prescribed manner.

**45.** The auditors shall examine the accounts and forward to the Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by them showing—

- (a) whether they contain a full and true account of everything which ought to be inserted therein,
- (b) whether the books which by any rules made under this Act are directed to be kept by the Administrator-General, have been duly and regularly kept, and
- (c) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder,



or (as the case may be) that such accounts are deficient, or that the Administrator-General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Power of auditors to summon and examine witnesses, and to call for documents.

46. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure,\* 1908,

- (a) to summon any person whose presence he thinks necessary to attend him from time to time; and
- (b) to examine any person on oath to be by him administered; and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person; and
- (d) to summon any person to produce any document or thing the production of which appears to be necessary for the purpose of such audit or examination.

(2) Any person who when summoned refuses, or without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code,† and the auditor shall report every case of such refusal or neglect to Government.

47. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the Government, and shall be defrayed in the prescribed manner.

Costs of audit, etc.

## PART VI.

### MISCELLANEOUS.

48. The Administrator-General may, in addition to, and not in derogation of, any other powers of expenditure lawfully exerciseable by him, incur expenditure—

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge; and

\* Act V. of 1908.

† Act XLV. of 1860.

- (b) with the sanction of the High Court at the Presidency-town on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

**49.** Any person interested in the administration of any estate,

Power of person beneficially interested to inspect Administrator-General's accounts, etc., and take copies.

which is in the charge of the Administrator-General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom.

**50. (1)** The Government shall make rules for carrying

Power to make rules.

into effect the objects of this Act and for regulating the proceedings of the Administrator-General.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Administrator-General and the audit and inspection thereof,
- (b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator-General,
- (c) the remittance of sums of money in the hands of the Administrator-General, in cases in which such remittances are required,
- (d) subject to the provisions of this Act, the fees to be paid under this Act, and the collection and accounting for any such fees,
- (e) the statements, schedules and other documents to be submitted to the Government or to any other authority by the Administrator-General, and the publication of such statements, schedules or other documents,
- (f) the realization of the cost of preparing any such statements, schedules or other such documents,
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed,

(h) the manner in which summonses issued under the provisions of section 46 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination, and

(i) any matter in this Act directed to be prescribed.

(3) All rules made under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act.

**51.** Whoever, during any examination authorised by this Act, makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

**52.** All assets in the charge of the Administrator-General which have been in his custody for a period of twelve years or upwards whether before or after the commencement of this Act without any application for payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account and credit of the Government of India:

Assets unclaimed for twelve years to be transferred to Government.

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any Court.

**53.** (1) If any claim is hereafter made to any part of the assets transferred to the account and credit of the Government of India under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the Government of India shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof as appears to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such

assets, apply by petition to the High Court at the Presidency-town against the Secretary of State for India in Council, and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceeding.

(3) The Court may further direct by whom the whole or any part of the cost of each party shall be paid.

54. (1) Whenever any person, other than an exempted person, dies leaving assets within the limits of the jurisdiction of a District Judge, the District Judge shall report the circumstance without delay to the Administrator-General of the Presidency, stating the following particulars so far as they may be known to him:—

- (a) the amount and nature of the assets,
- (b) whether or not the deceased left a will and, if so, in whose custody it is,
- (c) the names and addresses of the surviving next-of-kin of the deceased,

and, on the lapse of one month from the date of the death,

- (d) whether or not any one has applied for probate of the will of the deceased or letters of administration of his estate.

(2) The District Judge shall retain the assets under his charge, or appoint an officer under the provisions of section 239 of the Indian Succession Act, 1865, to take and keep possession of the same until the Administrator-General has obtained letters of administration, or until some other person has obtained probate or such letters or a certificate from the Administrator-General under the provisions of this Act, when the assets shall be delivered over to the holder of such probate, letters of administration or certificate:

Provided that the District Judge may, if he thinks fit, sell any assets which are subject to speedy and natural decay, or which for any other sufficient cause he thinks should be sold, and he shall thereupon credit the proceeds of such sale to the estate.

(3) The District Judge may cause to be paid out of any assets of which he or such officer has charge, or out of the proceeds of such assets or of any part thereof, such sums as may appear to him to be necessary for all or any of the following purposes, namely:—

- (a) the payment of the expenses of the funeral of the deceased and of obtaining probate of his will or letters of administration of his estate or a certificate under this Act,
- (b) the payment of wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant,
- (c) the relief of the immediate necessities of the family of the deceased, and
- (d) such acts as may be necessary for the proper care and management of the assets left by the deceased,

and nothing in section 279, section 280 or section 281 of the Indian Succession Act,\* 1865, or in any other law for the time being in force with respect to rights of priority of creditors of deceased persons shall be held to affect the validity of any payment so caused to be made.

Succession Act and Companies Act not to affect Administrator-General, and saving of provisions of Presidency Police Acts as to petty estates.

**55.** (1) Nothing contained in the Indian Succession Act,\* 1865, or the Indian Companies Act,† 1882, shall be taken to supersede or affect the rights, duties and privileges of any Administrator-General.

(2) Nothing contained in the Indian Succession Act,\* 1865, or in this Act, shall be deemed to affect, or to have affected, any law for the time being in force relating to the moveable property under two hundred rupees in value of persons dying intestate within any of the Presidency-towns or in the town of Rangoon, which shall be or has been taken charge of by the police for the purpose of safe custody.

Order of Court to be equivalent to decree.

**56.** Any order made under this Act by any Court shall have the same effect as a decree.

\* Act X. of 1865.

† Act VI. of 1882.

charged by the Governor-General in Council or by such Local Government as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf; and the Gazette of the Government exercising and discharging such powers and duties shall be the official Gazette of the Province for the purposes of this Act :

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such Province by such Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf; and probate or letters of administration granted to the Administrator-General by the Court so appointed shall have the same effect throughout the Provinces, or, if the Court so directs, Madras, or any part thereof, as probate or letters of administration granted to the Administrator-General by the High Court at a Presidency-town would or might have had

(iv) in the foregoing provisions of this Act the word "Presidency" shall be deemed to include a Province, and the expression "Presidency-town" the place of sitting of the Court appointed by the Governor-General in Council under clause (iii) of this subsection :

(v) generally, the provisions of the foregoing sections of this Act with respect to the High Court at a Presidency-town and the provisions of those sections or of any other enactment with respect to the Administrator-General of a Presidency shall, in relation to a Province, be construed, so far as may be, to apply to the Court and Administrator-General, respectively, appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification constituting the Province and, to or in which the Administrator-General of any Presidency within which any of the territories constituted into a Province were situate was a party or was otherwise concerned, shall be continued as if the notification had not been published.

(3) If, by reason of the constitution of Provinces for the purposes of this Act, it appears to the Governor-General in Council that any property vested in the Administrator-General of any Province should be vested in the Administrator-General of a Province, he may direct that the property shall be so vested, and thereupon it shall vest in the Administrator-General of the Province as fully and effectually for the purposes of this Act as if probate or letters of administration had been granted to him originally.

(4) If in accordance with the provisions of this section territories have been removed from the Presidency of Bengal and constituted a Province for the purposes of this Act, the Governor-General in Council may, by notification in the Gazette of India, direct that as regards the Presidency of Bengal excluding the territories so removed, the powers and duties of the Government under this Act shall be exercised and discharged by the Local Government of Bengal, and that the official Gazette shall be the Calcutta Gazette.

(5) Upon the rescission of a notification constituting a Province under sub-section (1), the territories comprised therein shall again form part of the Presidency within which they were originally included, the office of Administrator-General of the Province shall determine and all properties vested in and all proceedings by or against such Administrator-General pending at the date of the rescission shall vest in and be carried on by or against such Administrator-General or Administrators-General as the Governor-General in Council may direct.

59. Nothing in this Act shall be deemed to affect the provisions of provisions of the Indian Registration Act, 1908.

60. The enactments specified in the Schedule are hereby repealed to the extent specified in the third column thereof:

Provided that any administration, by or in pursuance of any Act hereby repealed, committed to any Administrator-General at the commencement of this Act shall be deemed to be committed to the Administrator-General under this Act.

*the construction and use of works on land so taken*),\* may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

17.† The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII. of 1863,‡ for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract ;

but the owner of such railroad or tramroad shall be liable for the loss of or damage to property delivered to him to be carried only when such loss or damage shall have been caused by negligence or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the common carrier liable for loss or damage caused by neglect or fraud. owner for loss of or damage to any property delivered to such carrier to be carried, where such loss or damage shall have arisen from the negligence or a criminal act of the carrier or any of his agents or servants.

9. In any suit brought against a common carrier for the loss, damage, or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage, or non-delivery was owing to the negligence or criminal act of the carrier, his servants, or agents.§

10. [*Saving of provisions of Act XVIII. of 1854.*] Repealed by the Indian Railways Act (IX. of 1890).

\* See now the Land Acquisition Act (I. of 1894), s. 2.

† S. 7 (so far as it relates to railways) has been repealed by the Indian Railways Act (IX. of 1890), Ch. VII., s. 72.

‡ See now the Land Acquisition Act (I. of 1894), s. 2.

§ This is in accordance with the English common-law.—See *Ross v. Hill*, 2, Com. B. 890; *Richard v. Lond., Brighton, & S. C. Ry. Co.*, 7 Com. B. 839.



**10.\*** No suit shall be instituted against a common carrier

Notice of loss or injury to be given within six months. for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

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### SCHEDULE.

Gold and silver coin.	Title-deeds.
Gold and silver in a manufactured or unmanufactured state.	Gold or silver plate, or plated articles.
Precious stones and pearls.	Glass.
Jewellery.	China.
Time-pieces of any description.	Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Trinkets.	Shawls and lace.
Bills and hundis.	Cloths and tissues embroidered with the precious metals or of which such metals form part.
Currency-notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign.	Articles of ivory, ebony, or sandal-wood.
Stamps and stamped paper.	
Maps, prints, and works of art.	
Writings.	

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\* S. 10 has been added by the Carriers Act (X. of 1899), s. 2. The Carriers Act (III. of 1865), as originally enacted, contained ten sections. The tenth section (saving of provisions of Act XVIII. of 1854) was repealed by the Indian Railways Act (IX. of 1890). The repealed section ran as follows: "10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854 (*relating to Railways in India*)."

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# ACT XXI. OF 1850 :

## The Caste Disabilities Removal Act, 1850.\*

PASSED ON THE 11TH APRIL 1850.

*An Act for extending the Principle of Section 9, Regulation VII., 1832, of the Bengal Code, throughout the Territories subject to the Government of the East India Company.*

WHEREAS it is enacted by section 9, Regulation VII., 1832,† of the Bengal Code, that,  
Preamble. “ whenever, in any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammadan persuasion, or where one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property

† Repealed by the Bengal Civil Courts Act (VI. of 1872), which has been repealed by the Bengal, N. W. P., and Assam Civil Courts Act (XII. of 1887).

\* This is the short title given by the Indian Short Titles Act (XIV. of 1897).

Act XXI. of 1850 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally by the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886); in the Santhal Parganas by the Santhal Parganas Laws Regulation (III. of 1886), s. 6 and Sch.; in the Arakan Hill District (with modifications) by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3.

It has been declared by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

- (1) Sindh (see *Gazette of India*, 1880, Pt. I. p. 672) :
- (2) West Jalpaiguri (*Gazette of India*, 1881, Pt. I., p. 74) :
- (3) The Districts of Hazaribagh, Lohardāga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504) :

**Act XXI.** to which, but for the operation of such laws, they would  
**of 1850.** have been entitled ;” and whereas it would be beneficial  
 to extend the principle of that enactment throughout the  
 territories subject to the government of the East India  
 Company ; It is enacted as follows :—

1. So much of any law or usage now in force within the territories subject to the govern-  
 ment of the East India Company as  
 Law or usage which inflicts forfeiture of, or affects, rights or change of religion on loss of caste, to cease to be enforced. any way to impair or affect any right of inheritance by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste,\* shall cease to be enforced as law in the Courts of the East India Company, and in the Courts established by Royal Charter within the said territories.†

- (4) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383) :
  - (5) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382) :
  - (6) The Districts of Peshawar, Hazara, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 48) :
  - (7) The District of Lahaul (see *Gazette of India*, 1886, Pt. I., p. 301) :
  - (8) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I., p. 771) :
  - (9) Coorg (see *Gazette of India*, 1878, Pt. I., p. 747) :
  - (10) The District of Sylhet (see *Gazette of India*, 1879, Pt. I., p. 631) :
  - (11) The rest of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I., p. 299) :
  - (12) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I., p. 1059).
- It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—
- (1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 606) :
  - (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505).

\* 13 B. L. R. 25, 75-76.

† 9 Moo. I. A. 239.

THE  
BENGAL, N.-W. P., AND ASSAM CIVIL COURTS ACT, 1887.  
(Act XII. of 1887).\*

[As modified up to July 1910.]

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PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received His Excellency's Assent on the 11th March 1887.*

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*An Act to consolidate and amend the Law relating to Civil Courts in  
Bengal, the North-Western Provinces, and Assam.*

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the Agra† and Assam: It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal, North-Western Title, extent, and com- Provinces, and Assam Civil Courts Act, 1887 :  
mencement.

(2) It extends to the territories for the time being respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces, and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Court,‡ and

(3) It shall come into force on the first day of July 1887.

2. (1) [*Repealed by Act XII. of 1891.*]

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\* This Act has been extended to the district of Sambalpoore by, and cited as the "BENGAL, AGRA, and ASSAM CIVIL COURTS ACT, 1887," in, the Sambalpoore Civil Courts Act (Ben. Act IV. of 1906).—See s. 2 of that Act printed, *infra*.

† Substituted for "North Western Provinces" by Act XVI. of 1911.

‡ Here the words "and except the Jhansi Division" have been repealed by the North-Western Provinces and Oudh Act XX. of 1890, s. 9.

(2) \* All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred, and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, or purporting, expressly or impliedly, to have been so constituted, made, conferred, and published, shall be deemed to have been respectively constituted, made, conferred, and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act, or to the corresponding part thereof.

## CHAPTER II.

### CONSTITUTION OF CIVIL COURTS.

Classes of Courts.

3. There shall be the following classes of Civil Courts under this Act namely:—

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

4. The Local Government may, with the previous sanction of the Governor-General in Council, increase or reduce the number of District Judges and Subordinate Judges now fixed.

5. The Local Government may, subject to the control of the Governor-General in Council, alter the number of Munsifs now fixed:

Provided that, except in the case of Munsifs whose monthly salary does not exceed two hundred and fifty rupees, an increase of the number of Munsifs now fixed shall not be made by the Local Government without the previous sanction of the Governor-General in Council.

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\* Here the word "But," repealed by Act XII. of 1891, has been omitted.

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation, or removal of the Judge or other cause, or whenever the Governor-General in Council has sanctioned an increase of the number of District Judges or Subordinate Judges, the Local Government may fill up the vacancy, or appoint the additional District Judges or Subordinate Judges, as the case may be.

(2) Nothing in this section shall be construed to prevent a Local Government from appointing a District Judge or Subordinate Judge to discharge for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

7. (1) Whenever the office of Munsif is vacant, or whenever the Local Government increases the number of Munsifs, the High Court shall nominate such person as it thinks fit to be a Munsif, and the Local Government shall appoint him accordingly.

(2) The Local Government may, after consultation with the High Court, and with the previous sanction of the Governor-General in Council, make rules as to the qualifications of persons to be appointed to the office of Munsif.

(3) When rules have been made under sub-section (2), a person shall not be nominated under sub-section (1) unless he possesses the qualifications required by the rules.

8. (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the High Court\* appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

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\* Words repealed by Act XVI. of 1911 have been omitted here.

10. (1) In the event of the death, resignation, or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge, or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

11. (1) In the event of the death, resignation, or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court, or to any Court under his administrative control, competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred :

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purpose of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

12. (1) A District Judge, on the occurrence within the local limits of jurisdiction of any vacancy in the office of Munsif, may appoint such person as he thinks fit to act in the office until that person is relieved by a Munsif appointed under section 7, or his appointment is cancelled by the District Judge.



(2) The District Judge shall forthwith report to the High Court the occurrence of every such vacancy and the making and cancelling of every such appointment.

**13. (1)** The Local Government may, by notification in the official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

Power to fix local limits of jurisdiction of Courts.

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges, or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges, or to one of two or more Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the Local Government under sub-section (1).

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

**14. (1)** The Local Government may, by notification in the official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

Place of sitting of Courts.

(2) All the places at which any such Courts are now held shall be deemed to have been fixed under this section.

**15. (1)** Subject to such orders as may be made by the Governor-General in Council, the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts.

Vacations of Courts.

(2) The list shall be published in the local official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

**16.** Every Civil Court under this Act shall use a seal of such  
Seals of Court. form and dimensions as are prescribed by the Local Government.

**17.** (1) Where any Civil Court under this Act has from any  
Continuance of proceedings of Courts ceasing to have jurisdiction. causes ceased to have jurisdiction with respect to any case, any proceedings in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made in section 623\* or section 649\* of the Code of Civil Procedure, or in any other enactment for the time being in force.

### CHAPTER III.

#### ORDINARY JURISDICTION.

**18.** Save as otherwise provided by any enactment for the  
Extent of original jurisdiction of District or Subordinate Judge. being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure,† to all original suits for the time being cognizable by Civil Courts.

**19.** (1) Save as aforesaid, and subject to the provisions of  
Extent of jurisdiction of Munsif. sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees.

(2) The Local Government may, on the recommendation of the High Court, direct, by notification in the official Gazette, with respect to any Munsif named therein, that his jurisdiction shall ex-

\* *I. e.*, ss, 623 and 649 of Act XIV. of 1882 (the old Code now repealed), which should now mean to apply to s. 114 with r. 1 of O. XLVII., and ss. 36 and 37, respectively, of Act V. of 1908 (the new Code entirely repealing the former Act).

† Act V. of 1908.

tend to all like suits of such value not exceeding two thousand rupees as may be specified in the notification.

**20. (1)** Save as otherwise provided by any enactment for the Appeals from District and time being in force, an appeal from a Additional Judges. decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

Appeals from Subordinate Judges and Munsifs. **21. (1)** Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which, or in any proceeding arising out of which, the decree or order was made, did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the Local Government, direct, by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeal shall thereupon be preferred accordingly.

## CHAPTER IV.

### SPECIAL JURISDICTION.

**22. (1)** A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs.

Power to transfer to Subordinate Judges appeals from Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself, or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

**23.** (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings. District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned, or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely—

- (a) proceedings under Bengal Regulation V., 1799 (*to limit the Interference of the Zillah and City Courts of Dewani Adalat in the Execution of Wills and Administration to the Estates of persons dying intestate*);
- (b) [*Repealed by the Guardians and Wards Act (VIII. of 1890).*]
- (c) [*Repealed by the Succession Certificate Act (VII. of 1889).*]
- (d) proceedings under the Indian Succession Act,\* 1865, and the Probate and Administration Act,† 1881, which cannot be disposed of by District Delegates; and
- (e) references by Collectors under section 322C‡ of the Code of Civil Procedure.

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them, or transfer them to a Court under his administrative control competent to dispose of them.

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\* Act X. of 1865.

† Act V. of 1881.

‡ Now Third Schedule of Act V. of 1908.

**24.** (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the Disposal of proceedings referred to in last-foregoing section. case may be, under the last-foregoing section, shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge :

Provided that an appeal from an order of a Munsif in any such proceedings shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

**25.** The Local Government may, by notification in the official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif, the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Causes Courts Act,\* 1887, for the trial of suits cognizable by such Courts, up to such value not exceeding five hundred rupees in the case of a Subordinate Judge, or two hundred and fifty rupees† in the case of a Munsif, as it thinks fit, and may withdraw any jurisdiction so conferred.

## CHAPTER V.

### MISFEASANCE.

**26.** Any District Judge, Additional Judge, Subordinate Judge, or Munsif may, for any misconduct, be suspended or removed by the Local Government. Suspension or removal of Judge by Local Government.

**27.** (1) The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge. Suspension of Subordinate Judges by High Court.

(2) Whenever the High Court suspends a Subordinate Judge under sub-section (1), it shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order with respect thereto as it thinks fit.

\* Act No. IX. of 1887.

† Words within quotations substituted for "one hundred rupees" by Act XVI. of 1911.

Suspension or removal of  
Munsif by High Court.

**28. (1)** The High Court may appoint a commission for enquiring into alleged misconduct of a Munsif.

(2) On receiving the report of the result of the inquiry, the High Court may, if it thinks fit, remove or suspend the Munsif.

(3) The provisions of Act No. XXXVII. of 1850 (*for regulating Inquiries into the Behaviour of Public Servants*) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

(4) The High Court may, before appointing the commission, suspend the Munsif pending the result of the inquiry.

(5) The High Court may, without appointing a commission, remove or suspend a Munsif.

**29. (1)** A District Judge may, whenever he sees urgent necessity for so doing, suspend a Munsif under his administrative control.

Suspension of Munsif by  
District Judge.

(2) Whenever a District Judge suspends a Munsif under subsection (1), he shall forthwith report to the High Court the circumstances of the suspension, and the High Court shall make such order with respect thereto as it thinks fit.

## CHAPTER VI.

### MINISTERIAL OFFICERS.

**30.** District Judges shall appoint the ministerial officers of their Courts, and, subject only to the control of the Local Government, may remove or suspend those officers, or fine them in an amount not exceeding one month's salary.

Appointment and removal  
of ministerial officers of Dis-  
trict Courts.

Appointment and removal  
of ministerial officers of other  
Courts.

**31. (1)** The ministerial officers of the Civil Courts subject to the administrative control of the District Judge shall be appointed,—

- (a) in the case of an appointment not likely to last, and not lasting, longer than two months, by those Courts, and,
- (b) in any other case, by the District Judge.

(2) An Additional Judge, Subordinate Judge, or Munsif may, by order, remove or suspend, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of misconduct or neglect in the performance of the duties of his office.

**32.** The provisions of the two last-foregoing sections shall be subject to the following modifications in their application to ministerial officers employed by more Civil Courts than one, namely—

(a) appointments not likely to last, and not lasting longer than two months shall be made by the Court of the highest class among those Courts, or, where there is no difference in class among those Courts, by the senior among the presiding Judges thereof; and

(b) such ministerial officers may not be removed or suspended by any Court except the Court which, under clause (a) of this section, is for the time being charged with the duty of making appointments to fill temporary vacancies.

**33.** The District Judge, subject only to the control of the General powers of District Local Government, may, by order, suspend or remove any ministerial officer to whom section 31 or section 32 applies, and may, on appeal or otherwise, reverse or modify any order made under either of those sections by any Court under his administrative control.

**34.** (1) The Local Government may, at the instance of the High Court, or of a District Judge, transfer a ministerial officer from any Civil Court under this Act to any other such Court.

(2) The District Judge may transfer a ministerial officer from any such Court within the local limits of his jurisdiction to any other such Court within those limits.

**35.** Any fine imposed under this chapter may be recovered by deduction from the salary of the person fined.

Recovery of fines.

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## CHAPTER VII.

## SUPPLEMENTAL PROVISIONS.

**36. (1)** The Local Government may, invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

Power to confer powers of Civil Courts on officers.

(a) any officer in the Chutia Nagpur, "Sambalpur"\* Julpaigori, or Darjiling District, or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Silhat, or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends, and belonging to a class defined in this behalf by the Local Government with the previous sanction of the Governor-General in Council.

(2) Nothing in sections 4 to 8 (both inclusive) or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive) applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the powers of a District Judge may, with the previous sanction of the Local Government, delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge, or to one of the officers invested with the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

**37. (1)** Where, in any suit or other proceeding, it is necessary for a Civil Court to decide any question concerning native law, regarding succession, inheritance, marriage, or caste, or any religious usage or institution, the Muhammad-

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\* The word "Sambalpur" has been inserted by the Sambalpur Civil Courts Act (Ben. Act IV. of 1906), s. 6.



dan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision, except in so far as such law has, by legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1), or by any other law for the time being in force, the Court shall act according to justice, equity, and good conscience.

**38.** (1) The presiding officer of a Civil Court shall not try Judges not to try suits in any suit or other proceeding to which he which they are interested. is a party, or in which he is personally interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding, or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under section 25\* of the Code of Civil Procedure.

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

**39.** For the purposes of the last-foregoing section, the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure,† the Court of such an officer shall be deemed to be of a grade inferior to that of the District Judge.

\* See now s. 24 of Act V. of 1908 (the new Code repealing that of 1882, Act No. XIV.)

† Now Act V. of 1908.

40. (1) This section and sections 15, 32, 37, 38, and 39  
 Application of Act to apply to Courts of Small Causes con-  
 Provincial Courts of Small stituted under the Provincial Small Cause  
 Causes. Courts Act,\* 1887.

(2) Save as provided by that Act, the other sections of this Act  
 do not apply to those Courts.

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\* Act No. IX. of 1887.

# BEN. ACT NO. IV. OF 1906.

## The Sambalpur Civil Courts Act, 1906.

PASSED BY THE LIEUTENANT GOVERNOR OF BENGAL IN COUNCIL.

*An Act to declare the Law relating to Civil Courts in the District of Sambalpur.*

WHEREAS it is expedient to declare the law relating to the Courts of Civil Judicature in the district of Sambalpur ;

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act,\* 1892, to the passing of this Act ;

It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (1) This Act may be called the Sambalpur Civil Courts Act, 1906 :

(2) It extends to the territory declared by the Proclamation of the Governor-General in Council, No. 2833 dated the 1st September 1905, to be subject to and included within the Bengal Division of the Presidency of Fort William.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, direct.

2. Notwithstanding anything contained in section 2 of the Law relating to Civil Court Bengal and Assam Laws Act,† 1905, in the Sambalpur district. the Central Provinces Courts Act,‡ 1904, is hereby repealed in the district of Sambalpur ; and the Bengal, North-Western Provinces, and Assam Civil Courts Act,§ 1887 (which may hereafter be cited for all purposes, but without prejudice to any other mode of citation as the Bengal, Agra, and Assam Civil Courts Act, 1887), is hereby extended to that district.

3. All Courts constituted, appointments, rules, and orders made, jurisdictions and powers conferred, and other things done in the said territory under the said Central Provinces Courts Act,‡ 1904, or under any enactment repealed thereby, shall, so far as may be, be

\* Stat. 55 & 56 Vict., c. 14.

† Act VII. of 1905.

‡ Act II. of 1904.

§ Act XII. of 1887.

deemed to have been respectively constituted, made, conferred, and done under the said Bengal, Agra, and Assam Civil Courts Act,\* 1887.

4. Any enactment or document referring to the said Central Provinces Courts Act,† 1904, or to any Construction of references to Act II. of 1904. enactment repealed thereby, shall, in respect of the said district, be construed to refer to the said Bengal, Agra, and Assam Civil Courts Act,\* 1887, or the corresponding portion thereof.

5. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending Pending proceedings. in any Civil Court in the Sambalpur district, and every such proceeding shall be continued as if this Act had not been passed :

Provided that appeals from decrees and orders passed by Civil Courts, and not appealed against, before the commencement of this Act, shall lie to the Court exercising the jurisdiction under the Bengal, Agra, and Assam Civil Courts Act,\* 1887, which corresponds, as far as may be, to the jurisdiction of the Court to which such appeals would have lain if this Act had not been passed.

6. In clause (a) of sub-section (1) of section 36 of the Bengal, Amendment of section 36 Agra, and Assam Civil Courts Act,\* (1) (a) of Act XII. of 1887. 1887, after the words "Chutia Nagpur," the word "Sambalpur" shall be inserted.

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\* Act XII. of 1887.

† Act II. of 1904.

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# ACT XIV. OF 1869:

## The Bombay Civil Courts Act, 1869.

RECEIVED THE G.-G.'S ASSENT ON THE 19TH MARCH 1869.

*An Act to consolidate and amend the Law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.*

WHEREAS it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay; It is hereby enacted as follows :—

### PART I.

#### PRELIMINARY.

1. This Act may be called the Bombay Civil Courts Act, 1869; and extends only to the territories (other than Sindh\*) under the government of the Governor of Bombay in Council in which the Code of Civil Procedure† is now in force.

But the Governor of Bombay in Council may, by notification in the Government Gazette, extend this Act to any other of the territories under such government in which the said Code† is not in force, or to Sindh.

2. [*Repeal of enactments.*] Repealed by Act XIV. of 1870.

### PART II.

#### DISTRICT AND SADR STATIONS.

3. The Governor of Bombay in Council may, from time to time, by notification in the Government Gazette, alter the limits of existing zilas

\* Ss. 3, 4, 12, 13, 14 to 20, 23, 32, 35 to 37, 40, and 43, of Act XIV. of 1869 have since been extended, by notifications under the Scheduled Districts Act, (XIV. of 1874), to the Province of Sindh.  
† Act V. of 1908.

(which shall hereafter be called districts), and create new districts for the purposes of this Act.

4. The Governor of Bombay in Council may also, from time to time, by notification in the Government Gazette, alter the position of the *sadr station* in any district, and fix the position of the *sadr station* in any new district.

### PART III.

#### DISTRICT COURTS.

5. There shall be in each district a District Court presided over by a Judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council, by whose authority only he shall be liable to be suspended or removed from his appointment.\*

6. The District Judge shall ordinarily hold the District Court at the *sadr station* in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.

7. The District Court shall be the principal Court of original jurisdiction of civil jurisdiction in the district within the meaning of the Code of Civil Procedure.†

8. Except as provided in sections 16, 17, and 26, the Appellate jurisdiction of District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

9. The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.

\* Certain words, repealed by Act XII. of 1876, have here been omitted: † Act V. of 1908.



The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

10. The District Judge shall obey all writs, orders, or processes issued to him by the High Court, and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require.

He shall further furnish such reports, returns and copies of proceedings as may be called for by the High Court or the Governor of Bombay in Council.

11. The District Judge shall use a circular seal, two inches in diameter, which shall bear thereon the Royal Arms with the following inscription in English and the principal language of the district: "District Court of

## PART IV.

### JOINT JUDGES.

12. The Governor of Bombay in Council may, with the previous sanction of the Governor-General of India in Council, appoint in any district a Joint Judge, who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits, and shall transact such civil business only as he may receive from the District Judge, as may have been referred to the Joint Judge by order of the High Court.

When the appointment of a Joint Judge shall have been sanctioned by the Governor-General of India in Council, the Governor of Bombay in Council may, so long as such sanction continues in force, appoint a successor to such Joint Judge in case his office becomes vacant, or transfer such Joint Judge from one district to another; and in such other district the Joint Judge so transferred shall have the same powers as he had in the former district.

**13.** All Regulations and Acts now or hereafter in force, and Enactments applied to applying to a District Judge, shall be deemed to apply also to the Joint Judge. Joint Judge's seal. Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge.

## PART V.

### ASSISTANT JUDGES.

**14.** The Governor of Bombay in Council, under the general Power to appoint Assistant control of the Governor-General Judges. India in Council, may appoint one or more assistants to the District Judge, and may suspend or remove from his appointment any assistant so appointed. . . . .

**15.** An Assistant Judge shall ordinarily hold his Court Situation of Assistant the same place as the District Judge; but Judge's Court. he may hold his Court elsewhere within the district whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

**16.** The District Judge may refer to any Assistant Judge Original jurisdiction of subordinate to him original suits Assistant Judge. which the subject-matter does not amount to 10,000 rupees in amount or value, and miscellaneous applications not being of the nature of appeals.

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications.

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge, or to the High Court, according as the amount or value of the subject-matter does not exceed or exceeds 5,000 rupees.†

**17.** The Governor of Bombay in Council may, by notification Appellate jurisdiction of in the Government Gazette, empower Assistant Judge. any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would

\* The rest of s. 14, repealed by Act XII. of 1876, have here been omitted.

† A portion of s. 16, as originally enacted, has here been omitted having been repealed by Acts VII. of 1889 and VIII. of 1890.

lie to the District Judge, and<sup>d</sup> as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force, and shall be subject to the same rules as regards procedure and appeals, as decrees and orders passed by the District Judge.

**18.** A person filling the office of Assistant Judge, on whom Continuance of Assistant Judge's appellate jurisdiction. the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge without reference to the district in which he may be employed: provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

**19.** The Governor of Bombay in Council may, by notification Power to invest Assistant Judge with powers of District Judge. in the Government Gazette, invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district, and may, by like notification, from time to time, determine and alter the limits of such part.

The jurisdiction of an Assistant Judge so invested shall, *pro tanto*, exclude the jurisdiction of the District Judge from within the said limits.

Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits.

Assistant Judge to use seal of District Judge.

**20.** Every Assistant Judge shall use the seal of the District Judge to whom he is assistant.

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## PART VI.

### SUBORDINATE JUDGES.

**21.** There shall be in each district so many Civil Courts Number of subordinate Civil Courts. subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor-General of India in Council, shall, from time to time, direct.

**22.** The Judges of such subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges.

No person shall be appointed a Subordinate Judge unless he be a subject of the Queen who has practised "three"\* years as an advocate of a High Court in India, or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such tests as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of Laws in the University of Bombay.

The tests so prescribed by the High Court shall be notified in the Government Gazette.

**22A. †** The Governor-General in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time, alter, the local limits of the ordinary jurisdiction of the Subordinate Judges.

**23.** The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may, from time to time, appoint within the local limits of their respective jurisdictions.

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall, subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court.

The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file.

**24.** The Subordinate Judges shall be of two classes.

\* Substituted for "five" by Bom. Act V. of 1912.

† S. 22A has been added by Act IX. of 1880, s. 2.

Jurisdiction of Subordinate Judge of first class.

The jurisdiction of a Subordinate Judge of the first class extends to all original suits and proceedings of a civil nature.

Jurisdiction of Subordinate Judge of second class. The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value five thousand rupees.

25. A Subordinate Judge of the first class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction, in respect of such suits and proceedings of a civil nature wherein the subject-matter exceeds five thousand rupees in amount or value as may arise within the local jurisdictions of the Courts in the district presided over by Subordinate Judges of the second class.

In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

26. In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original jurisdiction, of which Appeals from his decision, the amount or value of the subject-matter exceeds 5,000 rupees, the appeal from his decision shall be direct to the High Court.

27. The Governor of Bombay in Council may invest any Subordinate Judge of the first class with Appellate jurisdiction of Subordinate Judge of first class. power to hear appeals from such decrees and orders of Subordinate Courts as may be referred to him by the Judge of the district.

Decrees and orders so passed in appeal by a Subordinate Judge of the first class shall have the same force as if passed by a District Judge.

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

28. The Governor of Bombay in Council may invest, within such local limits as he shall, from time to time, appoint, any Subordinate Judge of the first class with the jurisdiction of Power to invest Subordinate Judges with small-cause powers.

a Judge of a Court of Small Causes, for the trial of suits cognizable by such Courts up to the amount of 500 rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of 50 rupees.\*

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

**"28. (1)** The High Court may by general or special order invest any Subordinate Judge, within such local limits and subject to such pecuniary limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian Succession Act, 1865, the Probate and Administration Act, 1881, or paragraph 5 of Schedule III. to the Code of Civil Procedure, 1908.

(2) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject-matter exceeds or does not exceed five thousand rupees.

(3) Every order of the District Judge passed on appeal under sub-section (2) from the order of a Subordinate Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees."†

**29.** Each Subordinate Judge shall use a seal one inch and-a-half in diameter, bearing the Royal Seal of Subordinate Judge. Crown with the following inscription in English and the principal language of the district—"Subordinate Judge of . . ."

**30. 31.** [*First Subordinate Judges; Pending proceedings.*] Repealed by Act XII. of 1876.

**32.‡** No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government is a party.

\* But see Act XVII. of 1879, s. 5 (to be read with s. 1).

† Sec. 21A has been inserted by Bom. Act V. of 1912.

‡ S. 32 (except the proviso, which has been added hereto by s. 3 of Act XV. of 1880) has been substituted for the original by Act X. of 1876, s. 15.

ment in his official capacity is a party; but, in every such case, such Judge or Court shall refer the plaintiff to the District Judge in whose Court alone (subject to the provisions of section 19) such suit shall be instituted :

Provided that nothing in this section shall be deemed to apply  
 Proviso. to any suit, merely because—

- (a) a municipal corporation constituted under Bombay Act No. VI. of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or
- (b) an officer of a Court appointed under the Code of Civil Procedure, section 456\* last paragraph† “is, in virtue of such appointment,” a party to such suit.

#### *Removal or Suspension.*

**33.** Whenever the High Court is of opinion that there are good grounds for making a formal and public enquiry into the truth of any imputation or misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an enquiry, and, on the receipt of his or their report, may order that the Subordinate Judge be removed or suspended from office, or reduced to a lower class.

The provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Suspension of Subordinate  
 Judges by High Court; by  
 District Judge.

**34.** The High Court may suspend any Subordinate Judge from office pending the result of an enquiry into his behaviour under this section.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But, whenever the District Judge suspends any such

\* This reference to s. 456 of Act XIV. of 1882 should now be meant to apply to rules 3 (2), (3) and 4 (4) of Order XXXII. of Act V. of 1908 (the present Code).—See s. 158 of the latter Act.

† In cl. (b) of the proviso to s. 32, certain words, repealed by Act XII. of 1891, have here been omitted.

Subordinate Judge, he shall forthwith report the case for the orders of the High Court.

Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend or remove from office any Subordinate Judge at their discretion.

## PART VII.

### TEMPORARY VACANCIES.

**35.** In the event of the death of the District Judge, or of his Temporary vacancy of being prevented from performing his office of District Judge. duties by illness or other casualty, or of his absence from his district on leave, the first in rank of the Assistant Judges in the district, or, in the absence from the district of an Assistant Judge, the first in rank of the Subordinate Judges, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and, while so in charge, shall perform the duties of a District Judge, with respect to the filing of suits and appeals, receiving pleadings, execution of processes, return of writs, and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

**36.** Any District Judge leaving the sadr station, and proceeding on duty to any place within his district, may delegate to an Assistant Judge or, in the absence of an Assistant Judge, to a Subordinate Judge at the sadr station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the sadr station.

**37.** In the event of the death, suspension, or temporary absence of any Subordinate Judge, the Temporary vacancy of office of Subordinate Judge. District Judge may empower the Judge of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct.



## PART VIII.

## MINISTERIAL OFFICERS.

**38.** All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended, or dismissed, by the District Judge, subject to such rules as the High Court may, from time to time, prescribe:

Appointment, &c., of ministerial officers. Provided that the Judge of every subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend, or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

Every such order shall be subject to appeal to the District Judge, and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

**39.** The duties of the said ministerial officers shall be regulated by such rules as the High Court may, from time to time, prescribe.

**40.** The Governor of Bombay in Council may, under the general control of the Governor-General of India in Council, appoint to any Civil Court under this Act a Clerk of the Court who, in addition to such duties as may, from time to time, be prescribed by the High Court, may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes and authenticate copies of papers.

## PART IX.

## MISCELLANEOUS.

**41.** The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may, from time to time, prescribe.

prescribe. The High Court shall also lay down rules under which copies of papers may be granted.

**42.** The High Court shall, from time to time, with the sanction of the Governor of Bombay in Council, prescribe and regulate the fees to be taken for any process issued by any Court, the constitution of which is declared by this Act, or by any officer of such Court.

Tables of the fees so prescribed shall be published in the Government Gazette.

**43.** The District and Subordinate Courts shall sit from day to day, except on Sundays, New Year's Day, Good Friday, Christmas Day, and Her Majesty's Birthday, and such other days as may be sanctioned for each or every district by the High Court.

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding in the whole six weeks in each year.

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## SCHEDULE :

### ENACTMENTS REPEALED.

*[Repealed by Act XIV. of 1870.]*

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# ACT NO. III. OF 1873:

## The Madras Civil Courts Act, 1873.\*

RECEIVED G.-G.'s ASSENT ON 21ST JANUARY 1873.

*An Act to consolidate and amend the Law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.*

WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court; It is hereby enacted as follows:—

### PART I.—PRELIMINARY.

Short title. 1. This Act may be called "The Madras Civil Courts Act, 1873 :"

Local extent. It extends to all the territories for the time being under the government of the Governor of Fort St. George in Council except the tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam ;

Commencement. And it shall come into force on the first day of March 1873.

2. [Repeal of certain enactments.—Repealed by Act XII. of 1873.]

### PART II.—ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

3. The number of District (heretofore designated Zila Courts to be established or continued under this Act shall be fixed, and may, from time to time, be altered, by the Local Government ;

Number of District Courts. Provided that no increase to the number of such Courts shall be made by such Government without the previous sanction of the Governor-General in Council.

\* This Act is amended by Acts XIX. of 1877 and XXI. of 1885.

4. The number of Subordinate Judges and District Munsifs to be appointed under this Act for each district shall be fixed and may, from time to time, be altered, by the Local Government :

Provided that no addition to the number of such officers shall be made by such Government without the previous sanction of the Governor-General in Council.

5. The place at which any Court under this Act shall be held may be fixed, and may, from time to time, be altered—  
Court's locality.

in the case of a District Court or a Subordinate Judge's Court—by the Local Government ;

in the case of a District Munsif's Court—by the High Court.

The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.\*

6. Whenever the office of the Judge of a District Court (hereinafter called a "District Judge"), or of a Subordinate Judge, under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Judges or Subordinate Judges under the provisions of section 3 or section 4,

the Local Government shall appoint to the office such duly-qualified person as it thinks proper.

Appointment to vacancy in office of District Munsif. 7. Whenever the office of a District Munsif under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Munsifs under the provisions of section 4,

the High Court shall appoint to the office such person as it thinks fit :

Provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

\* To s. 5, this paragraph has been added by Act XXI. of 1885, s. 2.

Every appointment made under this section shall be published in the same manner as appointments made by the Local Government.

The Local Government may, for good and sufficient reason, annul any appointment made under this section.

8. The present Zila Courts, Principal Sadr Amins, and District Courts, Subordinate Judges, and District Munsifs shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

9. Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the Local Government.

### PART III.—JURISDICTION.

10. The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Judge or Subordinate Judge.

Provided that, where more than one Subordinate Judge is appointed to any district, the District Judge may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

Local jurisdiction of District Munsifs.

11. The High Court shall fix, and may, from time to time, modify, the local jurisdiction of District Munsifs.

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general order in this behalf, be directed by the District Judge.

\* To s. 11, this paragraph has been added by Act XXI. of 1885, s. 3.

**12.** The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure,\* to all original suits and proceedings of a civil nature.

The jurisdiction of a District Munsif extends to all like suits and proceedings, not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed two thousand five hundred rupees.

**13.** Regular or special appeals or appeals under Madras Regulations XI. of 1832,† section 9, shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court :

Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter :

Provided also that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the district.

\* Now Act V. of 1908.

† Repealed by Act VI. of 1878.



**14.\*** When the subject-matter of any suit or proceeding is Valuation of suits for im- land, a house, or a garden, its value moveable property. shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act, 1870,† section 7, clause (5).

**15.** Every Court under this Act may require a witness or Power to require witness or party to any suit or other proceeding party to make oath or affir- pending in such Court to make such mation. oath or affirmation as is prescribed by the law for the time being in force.

**16.** Where, in any suit or proceeding, it is necessary for any Law administered by Court under this Act to decide any Courts to natives. question regarding succession, inheritance, marriage, or caste, or any religious usage or institution—

(a) the Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, or

(b) any custom (if such there be) having the force of law, and governing the parties or property concerned, shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished ;

(c) in cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

**17.** No District Judge, Subordinate Judge, or District Mun- Judges not to try suits in sif shall try any suit to or in which he which they are interested ; is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No District Judge or Subordinate Judge shall try any appeal nor appeals from decrees against a decree or order passed by passed in other capacities. himself in another capacity.

When any such suit, proceeding, or appeal comes before any Mode of disposing of such suits and appeals. such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

\* This section is repealed in local areas to which rules under s. 3 of Act VII. of 1887 apply.—See s. 6 of that Act.

† Act VII. of 1870.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section 6.\*

Nothing in the last-preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

#### PART IV.—MISCONDUCT OF JUDGES.

**18.** Any District Judge, Subordinate Judge, or District Munsif may, for any misconduct, be suspended or removed by the Local Government.

*Suspension of Judges by Local Government.*

**19.** The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

*Suspension of Subordinate Judge by High Court.*

The High Court shall immediately report the circumstances of such suspension,

and the Local Government shall make such order thereon as it thinks fit,

**20.** The High Court may suspend any District Munsif who is alleged to have misconducted himself, or may appoint a commission for enquiring into his alleged misconduct.

*Suspension of District Munsif by High Court. Commission of inquiry.*

The Provisions of Act No. XXXVII. of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this section, the power conferred by that Act on the Government being exercised by the High Court.

*Exercise by High Court of powers conferred on Government by Act XXXVII. of 1850.*

On receiving the report of the result of any such enquiry, the High Court may, if it think fit, remove the Munsif from office, or suspend him, or reduce him to a lower grade.

**21.** The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsif under his control.

*Suspension of District Munsif by District Judge.*

Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

#### PART V.—MINISTERIAL OFFICERS.

**22.** The ministerial officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall, subject to the control of the High Court,\* be final.

**23.†** The ministerial officer of the Courts of the Subordinate Judges and District Munsifs shall be appointed by such Subordinate Judges and District Munsifs, respectively, subject to the approval or confirmation of the District Judge within whose jurisdiction such Courts are situate, and may, "subject to the control of the High Court,"\* be removed from office, either by the said District Judge, or (subject to his approval or confirmation) by such Subordinate Judges and District Munsifs, respectively.

**24.** Every appointment under this Part shall be made subject to such rules as the Local Government, from time to time, prescribes on this behalf.

Every person appointed under this Part shall perform such duties as may, from time to time, be imposed upon him by the presiding officer of the Court to which he belongs.

The present ministerial officers of the Courts under this Act shall be deemed to have been appointed under this Part.

**24A.‡** The Local Government may, at the instance of the District Judge, transfer from any Court to any other Court, except the High Court, all or any of the ministerial officers of the Court of such Judge, or of any Subordinate Judge or District Munsif under his control.

\* See Act XXI. of 1885, s. 4.

† See Act XIX. of 1877, s. 2.

‡ See Act XIX. of 1877, s. 3.

The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

## PART VI.—MISCELLANEOUS.

Temporary discharge of duties of District Judge. **25.** In the event of the death of the District Judge,

or of his being incapacitated by illness or otherwise for the performance of his duties,

or of his absence from the station in which his Court is held, the senior Subordinate Judge of the district shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the execution of processes, and the like,

and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

**26.** The District Judge, on the occurrence within his district of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office; and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

**27.** Subject to the other provisions of this Act, and to the rules for the time being in force, and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any district is vested in the District Judge.

**28.** The Local Government may, by notification in the official Gazette, invest, within such local limits as it shall, from time to time, appoint, Investiture of Subordinate Judge with Small Cause jurisdiction.

any "District or" Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred,

and any District Munsif with the same jurisdiction up to the amount of rupees fifty, "or, on the re-investiture of District Munsif with similar jurisdiction, amount of the High Court, up to any amount not exceeding rupees two hundred,"\*

and may, by like notification, whenever it thinks fit, withdraw such jurisdiction from the "District or" Subordinate Judge or Munsif so invested.

**29.†** Sections 1, 8, 9, 10, and 12 of Madras Act No. I. of 1868 Amendment of Madras Act I. of 1868. (*for the appointment of a Commissioner for the administration of civil and criminal justice, and for the superintendence and collection of the revenues on the Nilgiri Hills*) shall be read as if, for the words 'Civil' and 'Zila,' used therein with reference to a Civil or Zila Judge or Court, the word 'District' was substituted, and as if, for the words 'Principal Sadr Amin,' the words 'Subordinate Judge' were substituted.

But save, as provided in this section, nothing herein contained shall be deemed to affect the said Madras Act.

**30.** The High Court may permit the Civil Courts under its control to adjourn, from time to time, for periods not exceeding in the aggregate two months in each year.

\* See Act XXI. of 1885, s. 5.

† The original para. 1 of s. 29 relating to amendment of s. 51, Act XI., 1865, has been repealed by Act IX. of 1887, and is here omitted. The original second and third paragraphs of s. 29 have been rendered inoperative by the repeal of Mad. Act. I. of 1868 by Mad. Act II. of 1881: they have not yet been formally removed from the Statute-book.



# ACT VI. OF 1882:

## The Indian Companies Act, 1882.

[As modified up to June 1909.]

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# ACT NO. VI. OF 1882:\*

## The Indian Companies Act, 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH FEBRUARY 1882.

*An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations.*

[As modified up to June 1909.]

WHEREAS it is expedient to amend the law relating to the  
Preamble. incorporation, regulation, and winding-up of Trading Companies and other Associations; It is hereby enacted as follows:—

### PRELIMINARY.

Short title. 1. This Act may be cited as "The Indian Companies Act, 1882:"

Local extent. It extends to the whole of British India:

Commencement. It shall come into force on the first day of May, 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act.

\* For Statement of Objects and Reasons, *see Gazette of India* 1881, Pt. V. p. 1275; for Proceedings in Council, *see ibid*, 1881, Supplement, pp. 932 and 1100, and *ibid*, 1882, Supplement, p. 203.

Act VI. of 1882 has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6; *see now s. 4 (1) of the Burma Laws Act (XIII. of 1898)*, by which Act XX. of 1886 has been repealed. It has been extended, under s. 5 of the Scheduled Districts Act (XIV. of 1874), to British Baluchistan, *see Gazette of India*, 1895, Pt. II., p. 9.

Ss. 3 to 10 (both inclusive) of the Indian Companies (Memorandum of Association) Act XII. of 1895, printed at the end of this Act, shall be read with, and taken as part of, this Act.—*see s. 2 of Act XII. of 1895, infra—App. II.*

The Indian Companies (Branch Registers) Act (IV. of 1900) is to be construed as one with this Act.—*See Act IV. of 1900, infra—App. III.*

This Act is, to a great extent, a re-enactment of Act X. of 1866, which was based chiefly on the Companies Act, 1862 (Stat. 25 & 26 Vict., c. 89).

2. On and from the commencement of this Act, the Indian Companies Act, 1856.\* shall be repealed. But such repeal shall not affect—

- (a) the incorporation of any Company registered under the said Act or any Act thereby repealed ;
- (b) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed ;
- (c) Table B† in the Schedule annexed to Act No. XIX. of 1857‡ or any part thereof so far as the same applies to any Company existing at the time of the commencement of this Act.

And all references to the said Indian Companies Act, 1866,\* in Acts or Regulations passed before the commencement of this Act, shall be read as if made to this Act ; and all rules made, fees directed, resolutions passed, and other things duly done, under the same Act, shall be deemed to be respectively made, directed, passed, and done under this Act ; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause— 3. In this Act, unless there be something repugnant in the subject or context—

“ Insurance Company ” means a Company that carries on the business of insurance, either solely, or in common with any other business or businesses ;

“ Court ” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction ;

“ District Court ” means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

\* Act X. of 1866. (*Repealed by s. 2 of this Act.*)

† Printed in Appendix I., *infra*.

‡ Act XIX. of 1857 was repealed by Act X. of 1866, s. 219.

4. No Company, Association, or Partnership, consisting of more than ten persons, shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor-General in Council, or by Royal Charter or Letters Patent; and no Company, Association, or Partnership consisting of more than 20 persons, shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association, or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act, or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts relating to the following subject-matters:—

The first Part—to the constitution and incorporation of Companies and Associations under this Act :

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act :

The third Part—to the management and administration of Companies and Associations under this Act :

The fourth Part—to the winding-up of Companies and Associations under this Act :

The fifth Part—to the registration-office :

The sixth Part—to the application of this Act to Companies registered under Act No. XIX. of 1857\* (*for the incorporation and regulation of Joint-stock Companies and other Associations, either with or without limited liability of the members thereof*), and Act No. VII. of 1860† (*to enable Joint-stock Banking Companies to be formed on the principle of limited liability*), or either of them :

The seventh Part—to Companies authorized to register under this Act :

The eighth Part—to the application of this Act to unregistered Companies :

\* Act XIX. of 1857 repealed by Act X. of 1866, s. 219. Table B in the Schedule to Act XIX. of 1857, however, remains in force.—See s. 2 (c), *supra*, and App. I., *infra*.

† Act VII. of 1860 was repealed by Act X. of 1866, s. 219.

The ninth Part—to miscellaneous provisions.

## PART I.

### CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

#### *Memorandum of Association.*

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

*Explanation.*—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

\* Where a Company is formed as a limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say):—

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\* Cf. s. 4 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

(a) the name of the proposed Company with the addition of the word "limited" as the last word in such name;

(b) the part of British India in which the registered office of the Company is proposed to be situate;

(c) the objects for which the proposed Company is to be established;

(d) a declaration that the liability of the members is limited;

(e) the amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations—

(f) that no subscriber shall take less than one share;

(g) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

9. Where a Company is formed on the principle of having the Memorandum of association liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say):—

(a) the name of the proposed Company, with the addition of the word "Limited" as the last word in such name;

(b) the part of British India in which the registered office of the Company is proposed to be situate;

(c) the objects for which the proposed Company is to be established;

(d) a declaration that each member undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

**10.** Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say):—

- (a) the name of the proposed Company ;
- (b) the part of British India in which the registered office of the Company is proposed to be situate ;
- (c) the objects for which the proposed Company is to be established.

**11.** The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

**12.** Any Company limited by shares may so far modify the conditions contained in its memorandum of association if authorized to do so by its regulations as originally framed, or as altered by especial resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock ; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

### *Reduction of Capital and Shares.\**

**13.** Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital ; but no such

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\* Cf. ss. 9 to 19 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-stock Companies, as is hereinafter mentioned.

\* *Explanation I.*—The word “capital” includes paid up capital.

\* *Explanation II.*—The power to reduce capital conferred by this section includes a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

14 The Company shall, after the date of the passing of any

Company to add “and reduced” to its name for a special resolution for reducing its capital, add to its name, until such date as the limited period.

Court may fix, the words “and reduced” as the last words in its name. and those words shall, until such date, be deemed to be part of the name of the Company.

15. A Company which has passed a special resolution for

Company to apply to the reducing its capital may apply to the Court for an order confirming reduction. Court by petition for an order confirming

the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms, and subject to such conditions, as it deems fit.

† When the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section

\* Cf. s 3 of the Companies Act, 1877, (Stat. 40 & 41 Vict., c. 26).

† Cf. s. 4 of the Companies Act, 1877 (Stat. 40 & 41 Vict., c. 26).

to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced" as mentioned in section 14.

\* In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

**16.** Where a Company proposes to reduce its capital, every creditor of the Company, who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and, for that purpose, shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company, who are not entered on the list, are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction:

\* Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

**17.** When a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court

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\* Cf. s. 4 of the Companies Act, 1877 (Stat. 40 & 41 Vict, c. 26).



may direct, a sum of such amount as is hereinafter mentioned (that is to say):—

- (a) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.
- (b) If the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, enquire into, and adjudicate upon, the validity of such debt or claim and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

**18.** The Registrar of Joint-stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the capital of the Company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,\* shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the Company is such as is stated in the minute.

\* Cf. s. 4 of the Companies Act, 1877 (Stat. 40 & 41 Vict., c. 26).

**19.** The minute, when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (of any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

**20.** If any creditor, who is entitled, in respect of any debt or claim, to object to the reduction of the capital of a Company under this Act, is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person, who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital, shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration; and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner, in all respects, as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

**21.** A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty, not exceeding ten rupees, for each copy in respect of which such default is made; and every director and manager of the Company,

who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

**22.** If any director, manager, or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code,\* any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**23.†** Any Company limited by shares may so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken, or agreed to be taken, by any person; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

#### *Sub-division of Shares.‡*

**24.** Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association:

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

\* Act XLV. of 1860.

† Cf. s. 5 of the Companies Act, 1877 (Stat. 40 & 41 Vict., c. 26).

‡ Cf. ss. 21 and 22 of the Companies Act, 1867 (Stat. 30 & 31 Vict. c. 131).

**25.** The statement of the number and amount of the shares embodied in memorandum of association, is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty, not exceeding twenty rupees, for each copy in respect of which such default is made; and every director and manager of the Company, who knowingly or wilfully authorizes or permits such default, shall incur the like penalty.

*Associations not for Profit.\**

**26.** Where any association, which might be formed under Special provisions as to this Act as a limited Company, proves associations formed for purposes not of gain. to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license† under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and, upon registration, shall enjoy all the privileges, and be subject to the obligations by this Act imposed on limited Companies, with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered.

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may, at the option of the Local Government, be inserted in the memorandum and articles of association, or in both or one of such documents.

\* Cf. s. 23 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

† For instance of such direction, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 164.

*Calls upon Shares.\**

**27.** Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations—as originally framed or as altered by special resolution, from doing any one or more of the following things, namely—

- (a) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls ;
- (b) accepting, from any member of the company who assents thereto, the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made ;
- (c) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

**28.** Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing, and filed with the Registrar of Joint-stock Companies at or before the issue of such shares.

*Transfer of Shares.†*

**29.** A Company shall, on the application of the transferor of any share or interest in the Company, enter, in its register of members, the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

\* Cf ss. 24 and 25 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

† Cf. s. 26 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

*Share-warrants to Bearer.\**

**30.** In the case of a Company limited by shares, the Company, if authorized so to do by its regulations Warrant of limited shares fully paid up may be issued as originally framed, or as altered by in name of bearer. special resolution, and, subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue, under their common seal, a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by Coupons. coupons or otherwise, for the payment of the future dividends on such shares or stock.

**31.** A share-warrant shall entitle the bearer thereof to the shares or stock specified therein, and Effect of share-warrant. such shares or stock may be transferred by the delivery of the share-warrant.

**32.** The bearer of a share-warrant shall, subject to the Re-registration of bearer regulations of the Company, be entitled, of a share-warrant in the register. on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering, in its register of members, the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

**33.** The bearer of a share-warrant may, if the regulations of Regulations of the Company the Company so provide, be deemed to company may make the bearer be a member of the Company within of a share-warrant a member. the meaning of this Act, either to the full extent, or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified, in respect of the shares or stock specified in such warrant, for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

**34.** On the issue of a share-warrant in respect of any share Entries in register where or stock, the Company shall strike out, share-warrant issued. of its register of members, the name of

\* Cf. ss. 27 to 31 and 32 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars :—

- (a) the fact of the issue of the warrant ;
- (b) a statement of the shares or stock included in the warrant, distinguishing each share by its number ;
- (c) the date of the issue of the warrant.

**35.\*** [*Stamps on share-warrants. Penalty for issuing share-warrant not duly stamped.*] *Repealed by the Indian Stamp Act (II. of 1899).*

### *Change of Name.*

**36.** Any Company under this Act, with the sanction of a Power of Companies to special resolution of the Company change name. passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name ; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case ; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted, or to be instituted, by or against the Company ; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

*Explanation.*—The issue of the certificate of incorporation is necessary to complete the change of name.

### *Articles of Association.*

**37.** The memorandum of association may in the case of Regulations to be pre- a Company limited by shares, and shall scribed by articles of asso- in the case of a Company limited by ciation. ) guarantee or unlimited, be accom- panied, when registered, by articles of association signed by the

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\* See now art. 59, Sch. I, and s. 62 (2) of the Indian Stamp Act (II. of 1899).

subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs numbered consecutively. They may adopt all or any of the provisions contained in the Table marked A in the First Schedule hereto. They shall, in the case of a Company, whether limited by a guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and, in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write, opposite to his name in the memorandum of association, the number of shares he takes.

**38.** In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the First Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

**39.** The articles of association shall be printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and as if such articles contained a contract on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or



any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

### *General Provisions.*

40.\* The memorandum of association and the articles of

Registration of memorandum of association and articles of association with fees as in Tables B. and C.

association, if any, shall be delivered to the registrar of Joint-stock Companies hereinafter mentioned, who shall retain and register the same. It is not

his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.†

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may, from time to time, direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C in the First Schedule hereto, the several fees therein specified, or such smaller fees as the Governor-General in Council may, from time to time, direct.

All fees paid to the said Registrar in pursuance of this act shall be accounted for to Government.

41. Upon the registration of the memorandum of association,

Effect of registration.

and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and, in the case of a limited Company, that the Company is limited; the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company shall thereupon be a body corporate by the name contained in the memorandum of association, capably forthwith of exercising all the functions of an

\* For notification fixing the fee for the registration of an association which is not for profit, as a company under s. 26, see Genl. Stat. R. & O., Vol. I.

† As to persons competent to contract, see s. 11 of the Indian Contract Act (IX. of 1872)

incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

42. A copy of the memorandum of association, having annexed thereto the articles of association, and articles to be given to members, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and, if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall, for each such offence, incur a penalty not exceeding twenty rupees.

43. No Company shall be registered under a name indential with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved, and testifies its consent in such manner as the registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name indential with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted, or to be instituted, by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

## PART II.

## DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

*Distribution of Capital.*

**44.** The shares or other interest of any member in a Com-  
 Nature of interest in Com-pany under this Act shall be moveable  
 property, capable of being transferred in  
 manner provided by the regulations of the Company, and shall not  
 be of the nature of real estate or immoveable property; and each  
 share shall, in the case of a Company having a capital divided into  
 shares, be distinguished by its appropriate number.

**45.** The subscribers of the memorandum of association of  
 any Company under this Act shall be  
 Definition of "member." deemed to have agreed to become mem-  
 bers of the Company whose memorandum they have subscribed,  
 and upon the registration of the Company shall be entered as mem-  
 bers on the register of members hereinafter mentioned; and every  
 other person who has agreed with a Company under this Act to  
 become a member of such Company, and whose name is entered  
 on the register of members, shall be deemed to be a member of  
 the Company.

**46.** Any transfer of the share or other interest of a deceased  
 member of the Company under this  
 Transfer by personal re- Act, made by his personal representative,  
 presentative. shall, notwithstanding such personal representative may not himself  
 be a member, be of the same validity as if he had been a member  
 at the time of the execution of the instrument of transfer.

**47.** Every Company under this Act shall cause to be kept  
 in one or more books a\* register of its  
 Register of members. members, and there shall be entered  
 therein the following particulars:—

- (a) the names and addresses, and the occupations, if any, of  
 the members of the Company, with the addition, in  
 the case of a Company having a capital divided into  
 shares, of a statement of the shares held by each

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\* These particulars as to keeping registers apply also to branch registers.—see s. 3 (3) of the Indian Companies (Branch Registers) Act (IV. of 1900)—Appendix III., *infra*.

member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member;

(b) the date at which the name of any person was entered in the register as a member;

(c) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company, who knowingly and wilfully authorizes or permits such contravention, shall incur the like penalty.

**48.** Every Company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(a) the amount of the capital of the company and the number of shares into which it is divided;

(b) the number of shares taken from the commencement of the Company up to the date of the summary;

(c) the amount of calls made on each share;

(d) the total amount of calls received;

(e) the total amount of calls unpaid;

(f) the total amount of shares forfeited;

- (g) the names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar of Joint-stock Companies.

**49.\*** After the issue by the Company of a share-warrant, the Particulars to be contained in annual summary shall contain the following particulars (namely): the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

**50.** If any Company under this Act, and having a capital divided into shares, makes default in not keeping a proper register. Penalty on Company, &c., complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

**51.** Every Company under this Act having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division, or conversion, give notice to the Registrar of Joint-stock Companies of the same specifying the shares so consolidated, divided, or converted.

**52.** Where any Company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all

\* Cf s. 32 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131)

the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company, and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the place instead of the amount of shares and the particulars relating to shares hereinbefore required.

53. No notice of any trust, express, implied, or constructive shall be entered on the register, or receivable by the Registrar in the case of Companies under this Act, and registered in British India.

54. A certificate under the common seal of the Company of shares or specifying any shares or stock held by any member of a Company, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business-hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratuitously and to the inspection of any other person on the payment of one rupee or such less sum as the Company may prescribe for each inspection.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

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\* The provisions of this section and of s. 60 apply to duplicate registers.—See s 3 (4) of the Indian Companies (Branch Registers) Act (IV. of 1900)—Appendix III., *infra*.

In addition to the above penalty, any Judge of a High Court may, by order, compel an immediate inspection of the register.

**56.** Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate, and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

**57.** Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and, in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place: and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

**58.** If the name of any person is fraudulently, or without sufficient cause, entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the

justice of the case, make an order for the rectification of the register and may direct the Company to pay all the costs of such application and any damages the party aggrieved may have sustained.

The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members, and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure\* shall lie.

59. Whenever any order has been made for rectifying the register in the case of a Company here-  
 Notice to Registrar of rectification of register. by required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

60† The register of members shall be *prima-facie* evidence of any matters by this Act directed or authorized to be inserted therein.  
 Register to be evidence.

#### *Liability of Members.*

61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

- (a) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

\* This reference should now be read as applying to Act V of 1908.  
 —See s. 158 of that Act.

† See foot-note to s. 55, at p. 30 *supra*.



- (b) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member :
- (c) No past member shall be liable to contribute to the assets of the Company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :
- (d) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :
- (e) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association :
- (f) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract :
- (g) No sum due to any member of a Company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company ; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributors amongst themselves.

*Explanation I.*—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

*Explanation II*—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

**62.\*** With respect to the contributions to be required in the

Liability of director whose event of the winding-up of a limited liability is unlimited. Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last-preceding section :—

- (a) Subject to the provisions hereinafter contained, any such director or manager, whether past or present shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited Company.
- (b) No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (c) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (d) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges, and expenses of the winding-up.

### PART III.

#### MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

##### *Provisions for Protection of Creditors.*

**63.** Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any

\* Cf. s. 5 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

64. Notice of the situation of such registered office and of Notice of situation of any change therein shall be given to the registered office. Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office.

65. Every limited Company under this Act, whether limited Publication of name by a by shares or by guarantee, shall paint limited Company. or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters in "the English language" \* in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company.

66. If any limited Company under this Act does not paint Penalties on non-publica- or affix, and keep painted or affixed, its tion of name. name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

\* If any director, or manager, or officer of such Company, or any person on its behalf, uses, or authorizes the use of, any seal pur-

\* In s. 65, the words quoted have been substituted, for the words "such language or languages," by the Indian Companies (Memorandum of Association) Act (XII. of 1895), s. 11—See Appendix II., *infra*.

**62.\*** With respect to the contributions to be required in the

Liability of director whose event of the winding-up of a limited liability is unlimited. Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last-preceding section:—

- (a) Subject to the provisions hereinafter contained, any such director or manager, whether past or present shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited Company.
- (b) No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (c) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company.
- (d) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges, and expenses of the winding-up.

### PART III.

#### MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

##### *Provisions for Protection of Creditors.*

**63.** Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any

Registered office of Company.

\* Cf. s. 5 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 31).

Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

**64.** Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

**65.** Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position; in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters in "the English language" \* in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, hundis, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company.

**66.** If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, or manager, or officer of such Company, or any person on its behalf, uses, or authorizes the use of, any seal pur-

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\* In s. 65, the words quoted have been substituted, for the words "such language or languages," by the Indian Companies (Memorandum of Association) Act (XII. of 1895), s. 11—See Appendix II., *infra*.

porting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues, or authorizes the issue of, any notice, advertisement, or other official publication of such Company, or signs, or authorizes to be signed, on behalf of such Company, any bill of exchange, hundi, promissory note, endorsement, cheque, or\* order for money or goods or issues, or authorizes to be issued, any bill of parcels, invoice, receipt, or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees; and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

### *Contracts.*

**67.†** Contracts on behalf of any Company under this Act may be made as follows (that is to say):—  
 Contracts how made.

- (a) Any contract, which, if made between private persons would be by law required to be in writing, and, if made according to English law, to be under seal may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged:
- (b) Any contract, which, if made between private persons, would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company: and such contract may, in the same manner, be varied or discharged:
- (c) Any contract, which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may, in the same way,

\* In s. 66, the word "or" has been inserted by the Repealing and Amending Act (XII. of 1891).

† Cf. s. 37 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

**68.** Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the Company, who knowingly and wilfully authorizes or permits the omission of such entry, shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing, or knowingly and wilfully permitting, such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may, by order, compel the performance of the duty imposed by this section on a limited Company, and, in addition to the above penalty, may, by order, compel an immediate inspection of the register.

*Explanation.*—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves, as such, of a mortgage or charge specifically affecting property of the Company, and not so registered.

**69.** Every limited Banking Company and every Insurance Company, and Deposit, Provident, or Benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in

Certain Companies to publish statement entered in schedule.

the form marked D in the First Schedule hereto, or as near thereto as circumstances will admit: and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company, and in every branch-office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

**70.** Every Company under this Act, and not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-stock Companies a copy of such register, and shall, from time to time, notify to the Registrar any change that takes place in such directors or managers.

**71.** If any Company under this Act, and not having a capital divided into shares, makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

**72.** A promissory note, bill of exchange, or hundi shall be deemed to have been made, drawn, accepted, or endorsed on behalf of any Company under this Act if made, drawn, accepted, or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted, or endorsed by, or on behalf or on account of, the Company by any person acting under the authority of the Company.



**73.** If any Company under this Act carries on business, when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

*\* Payment of Interest out of Capital.*

**"73A.** Where any shares of a Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the Company may pay interest on so much of that share-capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant :

Provided that—

- (1) no such payment shall be made unless the same is authorized by the Company's Articles of Association, or by special resolution ;
- (2) no such payment, whether authorized by the Articles of Association, or by special resolution, shall be made without the previous sanction of the Governor-General in Council ;
- (3) before sanctioning any such payment, the Governor-General in Council may, at the expense of the Company, appoint a person to inquire and report to him as to the circumstances of the case, and may, before making the appointment, require the Company to give security for the payment of the costs of the inquiry ;

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\* Inserted by Act IV. of 1910.

- (4) the payment shall be made only for such period as may be determined by the Governor-General in Council and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed, or the plant provided;
- (5) the rate of interest shall in no case exceed four per cent per annum or such lower rate as the Governor-General in Council may, by notification in the *Gazette of India*, prescribe;
- (6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;
- (7) the accounts of the Company shall show the share-capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate;
- (8) nothing in this section shall affect any Company to which the Indian Railway Companies Act,\* 1895, or the Indian Tramways Act,† 1902, applies.

‡ "Re-issue of Redeemed Debentures.

"73B. (1) Where, either before or after the passing of this Act, a Company has redeemed any debentures previously issued, the Company, unless the Articles of Association or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the Company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and, where a Company has purported to exercise such a power, the Company shall have power, and shall be deemed always to have had power, to re-issue the debentures, either by re-issuing the same debentures, or by issuing other debentures in their place, and, upon such a re-issue, the person entitled to the debentures shall have, and shall be

\* Act X. of 1895.

† Act IV. of 1902.

‡ Inserted by Act IV. of 1910.

deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where, with the object of keeping debentures alive for the purpose of re-issue, they have, either before or after the passing of this Act, been transferred to a nominee of the Company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a Company has, either before or after the passing of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a Company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section, which appears to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof unless he had notice, or, but for his negligence, might have discovered that the debenture was not duly stamped ; but, in any such case, the Company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction passed or made before the date of the passing of this Act as between the parties to the proceedings in which the decree was passed or the order made, and any appeal from any such decree or order shall be decided as if this Act had not been passed ; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a Company by its debentures or the securities for the same."

*Provisions for Protection of Members.*

**74.** A general meeting of every Company under this Act shall be held once at the least in every year.

A balance-sheet shall be made out and filed with the Registrar of Joint-stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to Table A in the First Schedule hereto, or as near thereto as circumstances admit.

And once at the least in every year the accounts of the Company shall be examined, and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before, and adopted by, the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

*Meetings.*

**75.\*** Every Company formed under this Act after the commencement of this Act shall hold a general meeting within six months after its memorandum of association is registered; and, if such meeting is not held, the Company shall be liable to a penalty, not exceeding fifty rupees a day, for every day after the expiration of such six months until the meeting is held; and every director or manager of the Company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

\* Cf. s. 39 of the Companies Act, 1867, (Stat. 30 & 31 Vict., c. 131)

**76.** Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act,\* 1866, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association or in the Table marked A in the First Schedule where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company.

† Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Any limited Company formed under this Act or the Indian Companies Act,\* 1866, may, by a special resolution, if authorized to do so by its regulations as originally framed, or as altered by special resolution, from time to time, modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

**77.** A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present, in person, or by proxy (in cases where, by the regulations of the Company, proxies are allowed), at any general meeting, of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present, in person, or by proxy, at a subsequent general meeting.

\* Act X. of 1866 (repealed by s. 2 of this Act).

† Cf. s. 8 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given, and the meeting to be duly held, whenever such notice is given, and meeting held, in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

**78.** In default of any regulations as to voting, every member

shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned, of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the First Schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same; and, in default of any regulation as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

**79.** A copy of every special resolution that is passed by

any Company under this Act shall be printed and forwarded to the Registrar of Joint-stock Companies, and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty, not exceeding twenty rupees, for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

**80.** Where articles of association have been registered, a copy

Copies of special resolutions to be embodied in articles of association.

of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section or section 76 it shall incur a penalty, not exceeding twenty rupees; for each copy in respect of which such default is made; and every director and manager of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty.

**81.** Any Company under this Act may, by instrument in

Execution of deeds abroad.

writing under its common seal, empower any person, either generally, or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company, and under his seal, shall be binding on the Company, and have the same effect as if it were under the common seal of the Company.

**82.** The Local Government may appoint one or more com-

Examination of affairs of Company by inspectors.

petent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

(a) In the case of a Banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(b) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

**83.** The application shall be supported by such evidence as

Application for inspection to be supported by evidence.

the Local Government may require for the purpose of showing that the applicants have good reason for requiring

such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

**84.** It shall be the duty of all officers and agents of the Company to produce, for the examination of the inspectors, all books and documents in their custody of power.

Inspection of books.

Any inspector may examine, upon oath, the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

**85.** Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

Result of examination how dealt with.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them, or to any one or more of them.

All expenses of, and incidental to, any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

**86.** Any Company under this Act may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the Company.

Power of Company to appoint inspectors.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government with this exception that, instead of making their report to the Local Government, they shall make the same in such manner, and to such persons, as the Company, in general meeting, directs.



The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

**87.** A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

**88.** Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-stock Company, shall specify the dates of,\* and the names of the parties to, any agreement enforceable by law which has been entered into by the Company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a share-holder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

#### *Notices.*

**89.†** Any summons, notice, order, or other document required to be served upon the Company, may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of Joint-stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him, or by leaving it for him at his office.

\* The word "of" has been inserted by the Repealing and Amending Act (XII. of 1891).

† Cf. s. 38 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

**90.** Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post-office.

**91.** Any summons, notice, order, or proceeding requiring authentication of notices authentication by the Company may be signed by any director, secretary, or other authorized officer of the Company, and need not be under the common seal of the Company, and the same may be in writing or in print, or partly in writing and partly in print.

### *Legal Proceedings.*

**92.** Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company, in cases where there are directors or managers, to be duly entered in books to be, from time to time, provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company, or meeting of directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators shall be deemed to be valid; and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

*Explanation.*—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

**93.** Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence,

Provision as to costs in suits brought by certain limited Companies.

the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

94. In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company, and is indebted to the Company in respect of a call made or other moneys due, whereby a suit has accrued to the Company.

### *Alteration of Forms.*

95. The forms set forth in the Second Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

The Governor-General in Council may, from time to time, make such alterations in the tables and forms contained in the First Schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the Second Schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Any such table or form, when altered, shall be published in the *Gazette of India*, and, upon such publication being made, such table or form shall have the same force as if it were included in the Schedule to this Act; but no alteration made by the Governor-General in Council in the Table marked A contained in the First Schedule shall affect any Company register prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

### *Arbitrations.\**

96. Any Company under this Act may, from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other

\* Cf. the Arbitration (Railway) Act, 1859 (Stat. 22 & 23 Vict., c. 59).

Company [or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms, or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

**97.** The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions, or stipulations thereof.

**98.** Every reference or agreement in accordance with this Act, except so far as it is, from time to time, revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

**99.** Where the Companies agree, the reference shall be made to a single arbitrator.

**100.** Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

**101.** Where there are to be two or more arbitrators, every Company shall, by writing under their common seal, appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

**102.** Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of

the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

**103.** Where the reference is made to two or more arbitrators, if, before the matters referred to them are determined, any arbitrator dies, or becomes incapable or unfit, or, for seven consecutive days, fails to act as arbitrator, the Company by which he was appointed shall, by writing under their common seal, appoint an arbitrator in his place.

**104.** Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

The arbitrator so appointed shall, for the purposes of this Act, be deemed to be appointed by the Company so failing.

**105.** When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

**106.** Where two or more arbitrators are appointed, they shall, before entering on the business of the arbitrators, reference, appoint, by writing under their hands, an impartial and qualified person to be their umpire.

**107.** If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the arbitrators.

**108.** Where two or more arbitrators are appointed, if, before the matters referred to them are determined, their umpire dies or becomes incapable or unfit, or, for seven consecutive days, fails to

act as umpire, the arbitrators shall, by writing under their hands, appoint an impartial and qualified person to be their umpire in his place.

**109.** If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of Appointment of umpire by Local Government to supply the decease, incapacity, unfitness, or vacancy. failure to act, of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

The umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the arbitrators so failing.

**110.** Every arbitrator appointed in the place of a preceding Succeeding arbitrators and umpires to have powers of predecessors. arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

**111.** Where there are two or more arbitrators, if they do not, Reference to umpire. within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

**112.** The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of Power for arbitrators, &c., to call for books, &c., and examine witnesses on oath. any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

**113.** Except where, and as the Companies otherwise agree, the Procedure in the arbitration. arbitrator, and the arbitrators and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

**114.** The arbitrator, and the arbitrators and the umpire, respectively, may proceed, in the absence, Arbitration may proceed in absence of Companies. of all or any of the Companies, in every

case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

**115.** The arbitrator, and the arbitrators and the umpire, respectively, may, if he and they, respectively, think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that, notwithstanding the other matters or any of them, be not then or thereafter awarded on.

**116.** The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing, under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be), the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

**117.** Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time, by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

**118.** No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

**119.** Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things, by every award in accordance with this Act, lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

act as umpire, the arbitrators shall, by writing under their hands, appoint an impartial and qualified person to be their umpire in his place.

**109.** If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act, of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

The umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the arbitrators so failing.

**110.** Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

**111.** Where there are two or more arbitrators, if they do not, within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

**112.** The arbitrator, and the arbitrators and the umpire, respectively, may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire, shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

**113.** Except where, and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire, respectively, may proceed in the business of the reference in such manner as he and they respectively shall think fit.

**114.** The arbitrator, and the arbitrators and the umpire, respectively, may proceed, in the absence of all or any of the Companies, in every



case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire, shall think fit so to proceed.

**115.** The arbitrator, and the arbitrators and the umpire, res-

Several awards may be respectively, may, if he and they, respectively, think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that, notwithstanding the other matters or any of them, be not then or thereafter awarded on.

**116.** The award of the arbitrator, or of the arbitrators or of

Awards made in due time the umpire, if made in writing, under to bind all parties. his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be), the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

**117.** Provided always that (except where and as the Com-

Power for umpire to extend companies otherwise agree) the umpire, from period for making his award. time to time, by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

**118.** No award made on any arbitration in accordance with

Awards not to be set aside this Act shall be set aside for any for informality. irregularity or informality.

**119.** Except only so far as the Companies bound by any

Awards to be obeyed. award in accordance with this Act from time to time otherwise agree, all things, by every award in accordance with this Act, lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly.

**120.** Full effect shall be given by the Courts according to Agreements, arbitrations, their respective jurisdictions, and by the and awards to have effect. Companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct and, where requisite, frame for the purpose.

**121.** Except where, and as the Companies otherwise agree, Costs of arbitration and the costs of and attending the arbitration award. and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

**122.** Except where and as the Companies otherwise agree, Payment of costs. and if and so far as the award does not, otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and, in other respects, the Companies shall bear their own respective costs.

**123.** On the application of any party interested, the sub- Submission to arbitration mission to any such arbitration may be to be filed in Court. filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure\* shall, so far as the same are applicable, apply to every such order, and to all proceedings thereunder.

## PART IV.

### WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

#### *Preliminary.*

**124.** The term "contributory" shall mean every person liable Meaning of "contributory." to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

\* This reference should now be read as applying to Act V. of 1908.—  
See s. 158 of that Act.

**125.** The liability of any person to contribute to the assets of a Company under this Act, in the event of the same being wound up, shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras, and Bombay.

**126.** If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable, in due course of administration, to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

**127.** If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to *proof*\* against the estate of such insolvent, or otherwise to allow to be paid out of his assets, in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

#### *Winding-up by Court.*

**128.** A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say):—

- (a) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court;

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\* The italicized word "proof" has been substituted for the word "prove" by the Repealing and Amending Act (XII. of 1891).

- (b) whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;
- (c) whenever the members are reduced in number to less than seven;
- (d) whenever the Company is unable to pay its debts;
- (e) whenever, for any other reason of a like nature, the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed  
unable to pay its debts.

**129.** A Company under this Act shall be deemed to be unable to pay its debts—

- (a) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;
- (b) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied, in whole or in part;
- (c) whenever it is proved, to the satisfaction of the Court, that the Company is unable to pay its debts.

**130.** The expression, "the Court," as used in this Part of this Act, shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless, in the regulations for the management of the Company, it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras, or Bombay (as the case may be), or by the Chief Court of the Punjab, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

The expression "debts" as used in this Part of this Act, means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a Life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity and other existing contracts.

**131.\*** Any application to the Court for the winding-up of a Company under this Act shall be by Application for winding-up to be made by petition. petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

The petition must allege facts which, if proved, will justify an order for winding up the Company. Every order, which may be made on any such petition, shall operate in favour of all the creditors and all the contributories of the Company, in the same manner as if it had been made upon the joint petition of a creditor and a contributory.†

*Explanation.*—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made or other moneys due.

**132.‡** No contributory of a Company under this Act shall be Contributory when not capable of presenting a petition for qualified to present winding-up petition. winding up such Company unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

\* Cf. s. 21 of the Life Assurance Companies Act, 1870 (Stat. 33 & 34 Vict., c. 61).

† The last para. of this section repealed by Act VI. of 1912 has been omitted.

‡ Cf. s. 40 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131).

Provided that, where a share has, during the whole or any part of the six months, been held by, or registered in the name of, the wife of a contributory, either before or after her marriage, or by, or in the name of, any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by, and registered in the name of, the contributory.

**133.** A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Commencement of winding-up by Court.

**134.** The Court may, at any time after the presentation of the petition for winding up a Company under this Act, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

Court may grant injunction.

The Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

**135.** Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Course to be pursued by Court on hearing petition.

**136.** When an order has been made for winding up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court, and subject to such terms as the Court may impose.

Suits to be stayed after order for winding-up.

**137.** When an order has been made for winding up a Company under this Act, a copy of such orders shall forthwith be forwarded by the Registrar of Joint-stock Companies, who shall make a minute thereof in his books relating to the Company.

Copy of order to be forwarded to Registrar.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

**138.** Such Court may, at any time after an order has been made for winding up a Company upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether, or for a limited time, on such terms, and subject to such conditions, as it deems fit.

**139.** When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, and share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due to be Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

**140.** The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

#### *Official Liquidators.*

**141.** For the purpose of conducting the proceedings in winding up a Company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators.

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any

act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

**142.** Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

**143.** The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects, and actionable claims to which the Company is, or appears to be, entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

**144.** The official liquidator shall have power, with the sanction of the Court, to do the following things:—

- (a) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;
- (b) to carry on the business of the Company, so far as may be necessary for the beneficial winding-up of the same;
- (c) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels;



- (d) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts, and other documents, and, for that purpose, to use, when necessary, the Company's seal ;
- (e) to prove, rank, claim, and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors ;
- (f) to draw, accept, make, and endorse any bill of exchange, hundi, or promissory note in the name and on behalf of the Company ; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money ; and the drawing, accepting, making, or endorsing of every such bill, hundi, or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill, hundi,\* or note had been drawn, accepted, made, or endorsed by, or on behalf of, such company, in the course of carrying on the business thereof ;
- (g) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory, or from his estate, and which act cannot be conveniently done in the name of the Company ; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters, or recover such moneys, be deemed to be due to the official liquidator himself :

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\* In s. 144, cl. (f), the word " hundi " has been inserted by the Repealing and Amending Act (XII. of 1891).

Provided that nothing herein contained shall be deemed to affect the rights, duties, and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively;

(b) to do and execute all such other things as may be necessary for winding up the affairs of the Company and distributing its assets.

**145.** The Court may provide by any order that the official Discretion of official liquidator may exercise any of the above liquidator. powers without the sanction or intervention of the Court; and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

**146.** The official liquidator may, with the sanction of the Appointment of attorney Court, appoint an attorney or vakil to assist him in the performance of his duties: or vakil to official liquidator.

Provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

### *Ordinary powers of Court.*

**147.** As soon as may be, after making an order for winding up the Company, the Court shall settle Collection and application of assets. a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

**148.** In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of, or being liable to the debts of, others. Provision as to representative contributories.

**149.** The Court may at any time after making an order for winding up a Company, require any Power of Court to require delivery of property. contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the Company to pay, deliver, convey, surrender, or transfer, forthwith, or within such time as the Court directs, to or into

the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled.

**150.** The Court may, at any time after making an order for winding up the Company, make an order, on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him, or from the estate of the person whom he represents, to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made, or to be made, by the Court in pursuance of this Part of this Act.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents, from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits :

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the Company, may be allowed to him by way of set-off against any subsequent call or calls.

In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make, to any director or manager of such Company whose liability is unlimited, the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

**151.** The Court may, at any time after making an order for winding up a Company, and, either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may, partly or wholly, fail to pay their respective portions of the same.

**152.** The Court may order any contributory, purchaser, or other person from whom money is due to payment into Bank. the Company, to pay the same into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

**153.** All moneys, bills, hundis, notes, and other securities paid and delivered into the Bank of Bengal, the Bank of Madras, or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out of, the same as the Court may direct.

**154.** If any person made a contributory, as personal representative of a deceased contributory, makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable, or immoveable, or both, and of compelling payment thereof of the moneys due.

**155.** Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings, whatsoever.

**156.** The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

**157.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

**158.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment, out of the estate of the Company, of the costs, charges, and expenses incurred in winding up any Company, in such order of priority as the Court thinks just.

**159.** When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

**160.** Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

**161.** If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

### *Extraordinary Powers of Court.*

**162.** The Court may, after it has made an order for winding up the Company, summon before it any officer of the Company or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court, at the time of its sitting, and allowed by it), the Court may

cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

**163.** The Court may examine upon oath, either by word of mouth, or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate, or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

**164.** The Court may, at any time before or after it has made an order for winding up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

**165.** Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate: and such proceedings may be instituted accordingly.

*Enforcement of, and Appeal from, Orders.*

**166.** All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

**167.** Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced, in any part of British India other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

**168.** Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree in the same manner as if it were the order or decree of the Court enforcing the same.

**169.** Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner, and subject to the same conditions, in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction subject to this restriction that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure,\* unless such time is extended by the Court of Appeal.

**170.** In all proceedings under this Part of this Act, every Court, Judge, and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court

\* Now Act V. of 1908.—See s. 158 of the Act.

when such seal is appended to any document made, issued, or signed under the provisions of this Part of this Act, or any official copy thereof.

**171.** The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the Company.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges, and expenses to witnesses, as the Court which made the order for winding up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

**172.** If any affidavit, affirmation, or declaration required to be sworn or made under the provisions, or for the purposes, of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain, or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, Judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners, and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Part of this Act.



*Voluntary Winding-up of Company.*

Circumstances under which  
Company may be wound up  
voluntarily.

**173.** A Company under this Act  
may be wound up voluntarily—

- (a) whenever the period, if any, fixed for the duration of the Company by the articles of association, expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company, in general meeting, has passed a resolution requiring the Company to be wound up voluntarily ;
- (b) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily ;
- (c) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same.

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

**174.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution.

**175.** Whenever a Company is wound up voluntarily, the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof ; and all transfers of shares, except transfers made to, or with the sanction of, the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void ; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

# 176. Notice of any special resolution or extraordinary resolution

Notice of resolution to wind up voluntarily. Notice of resolution to wind up voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company:—

- (a) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and, subject thereto, shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company;
- (b) liquidators shall be appointed for the purpose of winding up the affairs of the Company, and distributing the assets;
- (c) the Company, in general meeting, shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them;
- (d) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him;
- (e) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting or the liquidators may sanction the continuance of such powers;
- (f) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two;
- (g) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators;
- (h) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be

*prima-facie* evidence of the liability of the persons named therein to be contributories;

- (i) the liquidators may, at any time after the passing of the resolution for winding up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made, partly or wholly, fail to pay their respective portions of the same;
- (j) the liquidators shall pay the debts of the Company, and adjust the right of the contributories amongst themselves.

**178.** Where a Company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share-capital of Company limited by guarantee, that may not have been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

**179.** A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

**180.** Any arrangement, which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors, shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

**181.** Any creditor or contributory of a Company that has in manner aforesaid, entered into any arrangement with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

**182.** Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

**183.** Where a Company is being wound up voluntarily, the liquidators may, from time to time during the continuance of such winding up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

**184.** If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation, or otherwise, the Company, in general meeting, may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidators, if any, or by any contributory of the Company, be determined by the Court.

**185.** If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of a voluntary winding-up.

**186.** As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the Company disposed of; and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

The meeting shall be called by advertisement, specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 176.

**187.** The liquidator shall make a return to the registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

**188.** All costs, charges, and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

**189.** The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

**190.** Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

*Winding-up subject to the supervision of the Court.*

**191.** When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

**192.** A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court.

**193.** The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of a liquidator or of liquidators, and in

all other matters relating to the winding-up, subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

**194.** Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order, or in any subsequent order, appoint any additional liquidator.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

**195.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily :

Effect of order of Court for winding-up subject to supervision.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall, for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall

be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

**196.** Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

### *Supplemental Provisions.*

**197.** Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

**198.** Where any Company is being wound up, all books<sup>a</sup> accounts, and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *prima-facie* evidence of the truth of all matters purporting to be therein recorded.

**199.** Where any Company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the Company, and of the liquidator, may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and where the Company has been wound up voluntarily, in such way as the Company, by an extraordinary resolution, directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.



**200.** Where an order has been made for winding up a Company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

**200A.\*** (1) In the distribution of the assets of any Company being wound up under this Act, there shall be paid in priority to all other debts—

- Priority of debts.
- (a) all revenue, taxes, cesses, and rates, whether payable to Her Majesty, or to a local authority, due from the Company at the date of the commencement of the winding-up, and having become due and payable within the twelve months next before that date;
  - (b) all wages or salary of any clerk or servant in respect of service rendered to the Company within the two months next before the commencement of the winding-up, not exceeding one thousand rupees for each clerk or servant; and
  - (c) all wages, of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the Company within the two months next before the commencement of the winding-up.

(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the Company are insufficient to meet them, in which case they shall abate in equal proportions among themselves.

(3) Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith, so far as the assets of the Company are and will be sufficient to meet them, as and when the assets come into the hands of the liquidator or official liquidator.

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\* S. 200A has been inserted by the Indian Companies Act (1882) Amendment Act (VI. of 1887), s. 1.

201. The liquidator may, with the sanction of the Court where the Company is being wound up  
 General scheme of liquidation may be sanctioned. by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having, or alleging themselves to have, any claim, present or future, whereby the Company may be rendered liable.

202. The liquidator may, with the sanction of the Court where the Company is being wound up  
 Power to compromise. by the Court, or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting, or supposed to subsist, between the Company and any contributory or alleged contributory, or other debtor or persons apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities.

203.\* Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up, either voluntarily, or by or under the supervision of the Court, and the creditors of such Company or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors, present either in person or by proxy

\* Cf. s. 2 of the Life Assurance Companies Act, 1870 (Stat. 33 & 34 Vict., c. 61).

at such meeting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class or creditors, as the case may be, and also on the liquidator and contributories of the said Company.

**204.** Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another

Power for liquidators to accept shares, &c., as consideration for sale of property of Company.

Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part-compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies, or other like interests, or, in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say): either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or con-

currently with, any resolution for winding up the Company or for appointing liquidators; but, if an order be made within a year for winding up the Company, by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

206. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall, by writing under his hand, nominate and appoint an arbitrator to whom such dispute shall be referred.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If, for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then, upon such failure, the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and, in such case, the award or determination of such single arbitrator shall be final.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and, if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

**208.** Where more arbitrators than one have been appointed, they shall, before entering upon the Appointment of umpire. matters, referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

If such umpire die, or refuse or, for seven days, neglect to act, they shall forthwith, after such death, refusal, or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

**209.** The said arbitrators or their umpire may call for the Power of arbitrators to call production of any documents in the for books, &c. possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

**210.** The costs of and attending every such arbitration to Costs to be in discretion of be determined by the arbitrators shall arbitrators. be in the discretion of the arbitrators or their umpire, as the case may be.

**211.** On the application of either of the parties, the sub- Submission to arbitration mission to any such arbitration may be may be filed in Court. filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure\* shall, so far as the same are applicable, apply to every such order, and to all proceedings thereunder.

**212.** Where any Company is being wound up by the Court Certain attachments, dis- or subject to the supervision of the tresses, and executions to be Court, any attachment, distress, or ex- void. ecution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up, shall be void.

Nothing in this section applies to proceedings by the Government.

**213.** Every conveyance, mortgage, delivery of goods, payment, Fraudulent preference. execution, or other act relating to property, which would, if made or done by or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or

\* Now Act V. of 1908.—See s. 158 of the Act.

done by or against any Company, be deemed, in the event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding up a Company shall, in the case of a Company being wound up by the Court, or subject to the supervision of the Court, and a resolution for winding up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

**214.** Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied, or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator, or of any creditor or contributory, of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

*Explanation I.*—The banker of a Company is not, as such, an officer within the meaning of this section.

*Explanation II.*—Proceedings cannot be taken under this section against the representatives of a deceased officer.

**215.** If any director, officer, or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies, or fraudulently secretes any books, papers, writings, or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register book of account or other document belonging to the Company,

with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

**216.** Where any order is made for winding up a Company by the Court, or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

**217.\*** If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition, or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**218.†** Where the High Court makes an order for winding up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

**219.‡** If, during the progress of a winding-up in a District Court, it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court

\*†† Cf. s. 193 of the Indian Penal Code (Act XLV. of 1860) and ss. 41 and 42 of the Companies Act, 1867 (Stat. 30 & 31 Vict., c. 131) respectively.

may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

## PART V.

### REGISTRATION-OFFICE.

**220.** The registration of Companies under this Act shall be conducted as follows (that is to say):—

- (a) The Local Government may, after the sanction of the Governor-General in Council to the creation of any such offices shall have been obtained, from time to time, appoint\* such Registrars, Assistant Registrars, clerks, and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure :
- (b) The Local Government may make such regulations† as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks, and servants as aforesaid :

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\* For appointments made under the power conferred by this section in—  
(1) Assam, *see* Assam List of Local Rules and Orders, Ed. 1903 p. 181 ;

(2) Bombay, *see* Bom. Government Gazette, 1897, Pt. I., p. 1803 ;

(3) Coorg, *see* Coorg Gazette, 1904, Pt. I., p. 30 ;

(4) Eastern Bengal and Assam, *see* E. B. & Assam Gazette, 1908 Pt. I., p. 1143 ;

(5) United Provinces of Agra and Oudh, *see* U. P. Local R. and O. Vol. I. ;

(6) Burma, *see* Burma R. Manual, Vol., I., Bur. Gazette, 1907, Pt. I. p. 24 ;

(7) N.-W. F. Province, *see* Gazette of India, 1901, Pt. II., p. 1304 ;

(8) Madras, *see* Mad. Local R. and O., Vol. I.

† For regulations under this section in—

(1) Assam, *see* Assam Local R. and O. ;

(2) Bengal, *see* Ben. Local Stat. R. and O. Vol. II. ;

(3) Bombay, *see* Bom. Local R. and O. ;

(4) Burma, *see* Bur. R. M. Vol. I., Bur. Gazette, 1907, Pt., I., p. 133 ;

(5) Central Provinces, *see* C. P. Local R. and O. ;

(6) Madras, *see* Mad. Local R. and O., Vol. I. ;

(7) Punjab, *see*, Punjab Gazette, 1883, Pt. I., p. 489 ;

(8) United Provinces, *see* U. P. Local R. and O., Vol. I.



- (c) The Local Government may, from time to time, determine the places\* at which offices for the registration of Companies are to be established, so that there be at all times maintained, in each of the towns of Calcutta, Madras, and Bombay, at least one such office; and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established:
- (d) The Local Government may, from time to time, direct a seal or seals to be prepared for the authentication of any documents required for, or connected with, the registration of Companies:
- (e) Every person may inspect the documents kept by the Registrar of Joint-stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document, or any part of any other document, to be certified by the Registrar. There shall be paid, for such certificate of incorporation, certified copy, or extract, such fees† as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract:
- (f) The existing Registrar, Assistant Registrars, clerks, and other officers and servants in the office for the registration of Joint-stock Companies shall, during the pleasure of the Local Government, hold the offices, and receive the salaries, hitherto held and received by them, but they shall, in the execution of their duties, conform to any regulations that may be issued by the Local Government:

\* For instances of notification issued under this clause and clause (a) see Coorg Local R. and O., Madras Local R. and O., 1903, Pt. II, Vo. I. P. 103, and U. P. List of Local R. and O.

† For notification declaring in the case of Burma that the fees to be levied under this clause shall be the maximum fees allowed by this section, see Burma Rules Manual Vol. I., *Burma Gazette*, 1907, Pt. I. p., 136.

- (g) There shall be paid, to any Registrar, Assistant Registrar, clerk, or servant that may hereafter be employed in the registration of Joint-stock Companies, such salaries as the Local Government may, with the sanction of the Governor-General in Council, direct:
- (h) Whenever any act is herein directed to be done to or by the Registrar of Joint-stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-stock Companies, or, in his absence, to or by such person as the Local Government may, for the time being, authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

## PART VI.

### APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACT.

**221.** Subject as hereinafter mentioned, this Act, with the exception of Table A in the First Schedule, shall apply to Companies formed under Act XIX. of 1857 or VII. of 1860. formed and registered under Act No. XIX. of 1857 and Act No. VII. of 1860,\* or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this act as a Company limited by shares, and, in the case of a Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act, with this qualification that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively re-

\* Acts XIX. of 1857 and VII. of 1860 have been repealed by Act X. of 1866, s. 219. Table B in the Schedule to Act XIX. of 1857, however, remains in force (*see s. 2, supra*) and is printed, *infra*, as Appendix I. to this Act.

gistered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the Table marked B annexed to Act No. XIX. of 1857,\* and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

**222.** This Act shall apply to Companies registered, but not formed, under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered, but not formed, under this Act, with this qualification that, wherever reference is made, expressly or impliedly, to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

**223.** Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

## PART VII.

### COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

**224.** With the exceptions made in the next following section, Companies capable of and subject to the regulations therein being registered. contained, every Company, existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor-General in Council other than this Act, or of Letters Patent, or being other-

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\* Acts XIX. of 1857 and VII. of 1860 have been repealed by Act X. of 1866, s. 219. Table B. in the Schedule to Act XIX. of 1857, however, remains in force (*see s. 2, supra*) and is printed, *infra*, as an Appendix to this Act.

wise duly constituted by law, and consisting of seven or more members. may, at any time hereafter, register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

**225.** The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say):—

Regulations as to registration of existing Companies.

- (a) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent and not being a Joint-stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof;
- (b) No Company having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee.
- (c) No Life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-stock Company as hereinafter defined, shall, in pursuance of this Part of this Act, register under this Act as a Company limited by shares:
- (d) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by a proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:
- (e) Where a Company, not having the liability of its members limited by Act of Parliament or Act of the Governor-General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present,

personally or by proxy, at such last-mentioned general meeting.

(f) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

**226.** For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-stock Company shall be deemed to be a Company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

**227.** Previously to the registration, in pursuance of this Part of this Act, of any Joint-stock Company, there shall be delivered to the Registrar the following documents (that is to say):—

(a) A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such Company, with

the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number.

(b) A copy of any Act of Parliament, or Act of the Governor-General in Council, Royal Charter, Letters patent, deed of settlement contract of co-partnery, or other instrument constituting or regulating the Company.

(c) If any such Joint-stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say):—

the nominal capital of the Company and the number of shares into which it is divided;

the number of shares taken and the amount paid on each share;

the name of the Company, with the addition of the word “limited” as the last word thereof;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

**228.** Previously to the registration, in pursuance of this Part of this Act, of any Company not being a Joint-stock Company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor-General in Council, Letters Patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

**229.** Where a Joint-stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons

who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

**230.** The list of members and directors and any other particulars relating to the Company, hereby Authentication of statements of existing Companies. required to be delivered to the Registrar, shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

**231.** The Registrar may require such evidence as he thinks Registrar may require necessary for the purpose of satisfying evidence as to nature of himself whether an existing Company is or not a Joint-stock Company as Company. hereinbefore defined.

**232.** Every Banking Company existing at the date of the passing of this Act, which registers On registration of Banking Company with limited liability, notice to be given to customers. itself as a limited Company, shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice, that it is intended so to register the same, to every person and partnership firm having a banking account with the Company.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are, for the time being, interested in the account in respect of which such notice ought to have been given, and, so far as respects such account and all variations thereof, down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

**233.** No fees shall be charged in respect of the registration Exemption of certain Companies from payment of fees. in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously

to its being registered as a limited Company. the liability of the shareholders was limited by some Act of Parliament or Act of the Governor-General in Council, or by Letters Patent.

**234.** Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

**235.** Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the Tables marked B and C in the First Schedule hereto. the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company. that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

**236.** A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

**237.** All such property, moveable and immoveable, including all interests and rights in, to, and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to, or be vested in, the Company at the date of its registration under this Act, shall, on registration, pass to, and vest in, the Company as incorporated under this Act for all the estate and interest of the Company therein.

**238.** The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred by it.



red, or any contract entered into, by, to, with, or on behalf of, such Company previously to such registration.

**239.** All such suits and other legal proceedings as may, at the time of the registration of any Company registered in pursuance of this Part of this Act, have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding up the Company.

**240.** When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner, and with the same incidents, as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act subject to the provisions following (that is to say):—

- (a) That Table A in the First Schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof:
- (b) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-stock Company whose shares are not numbered:
- (c) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council, or Act of the Governor-General in council relating to the Company:

- (d) That no Company shall have power, without the sanction of the Governor-General in Council, to alter any provision contained in any Letters Patent relating to the Company :
- (e) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay, or contribute to the payment of, any debt or liability of the Company contracted prior to registration, or to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay, or contribute to the payment of, the costs, charges, and expenses of winding up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute, to the assets of the Company in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :
- (f) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor-General in Council, deed of settlement, contract of co-partnery, Letters Patent, or other instrument constituting or regulating the Company.

**241.** The Court may, at any time after the presentation of a petition for winding up a Company registered in pursuance of this Part of this Act, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

**242.** Where an order has been made for winding up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

## PART VIII.

### APPLICATION OF ACT TO UNREGISTERED COMPANIES.

**243.** Subject as hereinafter mentioned, any Partnership, Association, or Company, except Railways Companies incorporated by Act of Parliament, or Act of the Governor-General in Council, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions :—

(1.) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes

of the winding-up of such Company, be deemed to be the registered office of the Company :

(2.) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court :

(3.) The circumstances under which an unregistered Company may be wound up are as follow (that is to say) :—

(a) whenever the Company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(b) whenever the Company is unable to pay its debts ;

(c) whenever the Court is of opinion that it is just and equitable that the Company should be wound up :

(4.) an unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(a) whenever a creditor, to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company, or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has, for the space of three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor ;

(b) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager, or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid,

secured, or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same;

(c) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied;

(d) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

**244.** In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay, or contribute to the payment of, any debt or liability of the Company, or to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members amongst themselves, or to pay, or contribute to the payment of, the costs, charges, and expenses of winding up the Company.

Every such contributory shall be liable to contribute, to the assets of the Company in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

**245.** The Court may, at any time after the making of an application for winding up an unregistered Company, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings, in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

**246.** Where an order has been made for winding up an un-registered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court, and subject to such terms as the Court may impose.

**247.** If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding up such Company, or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims, and rights in, to, and out of, property, moveable and immoveable, and including actionable claims, as may belong to, or be vested in, the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the Company, and recovering the property thereof.

**248.** The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers, or do any act, in the case of unregistered Companies, which might be exercised or done by it or him in winding up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

## PART IX.

## MISCELLANEOUS PROVISIONS.

Company not to buy its own shares. **249.** No Company under this Act shall have power to buy its own shares.

**250.** Where, previously to the commencement of this Act, an order has been made for winding up a Company under the Indian Companies Act, 1866,\* or a resolution has been passed for winding up a Company voluntarily, such Company shall be wound up in the same manner, and with the same incidents, as if this Act were not passed; and, for the purpose of such winding-up, the Indian Companies Act, 1866,\* shall be deemed to remain in full force.

**251.** Where, previously to the commencement of this Act, any conveyance, mortgage-deed, or other instrument has been made in pursuance of the Indian Companies Act, 1866,\* such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866,\* shall be deemed to remain in full force.

**252.** All offences under this Act may be tried by any Magistrate of the first class unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force† in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

If any offence, which by this Act is declared to be punishable by any penalty, is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras, and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

\* Act X. of 1866 (repealed by s. 2 of this Act, *supra*).

† The law now in force is contained in s. 32 of the Code of Criminal Procedure (Act V. of 1898).

**253.\*** Subject to the provisions hereinafore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

**254.\*** The High Court may, from time to time, make rules consistent with this Act, and with the Code of Civil Procedure,† concerning the mode of proceedings to be had for winding up a Company in such Court, and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital, and the subdivision of the shares, of a Company.

**255.** In sections 1 and 13 of Act No. XXI. of 1860 (*for the Regulation of Literary, Scientific, and Charitable Societies*), the words, "Registrar of Joint-stock Companies" in Act XXI. of 1860. "Registrar of Joint-stock Companies" shall be construed to mean Registrar of Joint-stock Companies under this Act, or any Act for the time being in force.

**256.** Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras, and the Bank of Bombay.

## FIRST SCHEDULE.

### TABLE A.

#### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

##### *Shares.*

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

\* Cf. ss. 45 and 50, respectively, of the Companies Act, 1907 (Stat. 30 & 31 Vict., c. 131).

† For rules made by the High Court, Calcutta, under this section, see *Calcutta Gazette*, 1903, Pt. I, p. 997, and *Assam Gazette*, 1903, Pt. II, p. 534.

‡ This reference should now be meant as applying to Act V. of 1908.—See s. 158 of the Act.



(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed on payment of eight annas, or such less sum as the Company in general meeting may prescribe.

#### *Calls on Shares.*

(4) The directors may, from time to time, make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places, appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

#### *Transfers of Shares.*

(8.) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the Register-book in respect thereof.

(9.) Shares in the Company shall be transferred in the following form:—

I, A B, of \_\_\_\_\_, in consideration of the sum of rupees \_\_\_\_\_ paid to me by C D, of \_\_\_\_\_, do hereby transfer to the said C D the share (or shares) numbered \_\_\_\_\_ standing in my name in the books of the \_\_\_\_\_ Company, to hold unto the said C D his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution thereof: and I, the said C D, do hereby agree to take the said share (or shares) subject to the same conditions. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

(10.) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer-books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

### *Transmission of Shares.*

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

(13.) Any person becoming entitled to a share, in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member, upon such evidence being produced as may, from time to time, be required by the Company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

### *Forfeiture of Shares.*

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may, at any time thereafter, before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22.) A solemn declaration in writing made before a Magistrate that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

#### *Conversion of Shares into Stock.*

(23.) The directors may, with the sanction of the Company previously given in general meeting, convert any paid-up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interest therein or any part of such interest, in the same manner, and subject to the same regulations, as, and subject to which any shares in the capital of the Company may be transferred or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of the consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

#### *Increase in Capital.*

(26.) The directors may, with the sanction of a special resolution of the Company previously given in general meetings, increase its capital by the issue of new shares: such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company, in general meeting, directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to

which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls and the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

#### *General Meetings.*

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held, on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

#### *Proceedings at General Meeting.*

(35.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say: If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

(38.) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40.) If there is no such chairman, or if, at any meeting, he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The chairman may, with the consent of the meeting adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

#### *Votes of Members.*

(44.) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and, if any member is a minor, he may vote by his guardian, or any one of his guardians if more than one.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

*Company, Limited.*

I, \_\_\_\_\_, of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, and entitled to \_\_\_\_\_ vote or \_\_\_\_\_ votes, hereby appoint \_\_\_\_\_, of \_\_\_\_\_, as my proxy, to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_, and at any adjournment thereof [or at any meeting of the Company that may be held in the year \_\_\_\_\_]. As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_.

*Directors.*

(52.) The number of the directors, and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

*Powers of Directors.*

(55.) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these

articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

#### *Disqualification of Directors.*

(57.) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in, or participates in the profits of, any contract with the Company.

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with, or done any work for, the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted.

#### *Rotation of Directors.*

(58.) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and, at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If, at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if, at such adjourned meeting, the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year and so on, from time to time, until their places are filled up.

(63.) The Company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

#### *Proceedings of Directors.*

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meeting as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if, at any meeting, the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69.) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### *Dividends.*

(72.) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.



(73.) No dividend shall be payable except out of the profits arising from the business of the Company.

(74.) The directors may, before recommending any dividend, set aside, out of the profits of the Company; such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77.) No dividend shall bear interest as against the Company.

#### *Accounts.*

(78.) The directors shall cause true accounts to be kept—

of the stock-in-trade of the Company;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and

of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year, the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure, which may, in fairness, be distributed over several years, has been incurred in any one year, the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a

summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

#### *Audit.*

(83.) Once at the least in every year, the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the Company: but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93.) Every auditor shall have a list delivered to him of all books kept by the Company, and shall, at all reasonable times, have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts, and, in every such report, they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly

drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

*Notices.*

(95.) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post-office.

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Dr.

*Balance-sheet\* of the*

## CAPITAL AND LIABILITIES.

I. CAPITAL	SHOWING—	Rs.	As.
1	The number of shares ... ..		
2	The amount paid per share ... ..		
3	If any arrears of calls, the nature of the arrears and the names of the defaulters ... ..		
4	The particulars of any forfeited shares ... ..		
II. DEBTS AND LIABILITIES OF THE COMPANY	SHOWING—		
5	The amount of loans on mortgages or debenture-bonds ... ..		
6	The amounts of debts owing by the Company distinguishing—		
	(a) Debts for which acceptances have been given ... ..		
	(b) Debts to tradesmen for supplies of stock-in-trade or other articles ... ..		
	(c) Debts for law-expenses ... ..		
	(d) Debts for interest on debentures or other loans ... ..		
	(e) Unclaimed dividends ... ..		
	(f) Debts not enumerated above ... ..		
VI. RESERVE FUND	SHOWING		
	The amount set aside from profits to meet contingencies ... ..		
VII. PROFIT AND LOSS	SHOWING		
	The disposable balance for payment of dividends, &c.		
CONTINGENT LIABILITIES.	Claims against the Company not acknowledged as debts ... .. Moneys for which the Company is contingently liable ... ..		

\* See clauses (81) and (82)

Company made up to

18 .

CR.

## PROPERTY AND ASSETS.

III. PROPERTY HELD BY THE COMPANY		SHOWING—	Rs.	As.
	7	Immoveable property distinguishing— (a) Freehold land ... .. (b) „ buildings ... .. (c) Leasehold ... ..		
	8	Moveable property distinguishing— (d) Stock-in trade ... .. (e) Plant ... .. The cost to be stated with deduc- tions for deterioration in value as charged to the reserve fund or profit and loss.		
IV. DEBTS OW- ING TO THE COMPANY		SHOWING—		
	9	Debts considered good for which the Company hold bills or other secur- ities ... ..		
	10	Debts considered good for which the Company hold no security ... ..		
	11	Debts considered doubtful and bad ... Any debt due from a director or other officer of the Company to be separately stated.		
V. CASH AND INVEST- MENTS		SHOWING—		
	12	The nature of investment and rate of interest.		
	13	The amount of cash, where lodged, and if bearing interest ... ..		

of the foregoing Table A

## TABLE B.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

	Rs.	As.	P.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of ... ..	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say) :—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees ... ..	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees up to 1,00,000 rupees ... ..	5	0	0
For every 10,000 rupees of nominal capital or part of 10,000 rupees after the first 1,00,000 rupees ... ..	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees or part of 10,000 rupees as would have been payable if such increased capital had formed part of the original capital at the time of registration :			
Provided that no Company shall be liable to pay, in respect of nominal capital, on registration or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fees as is charged for registering a new Company.			
For registering any document hereby required or authorized, to be registered, other than the memorandum of association ... ..	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ... ..	5	0	0

## TABLE C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	Rs.	As.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20.	40	0	0

For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	Rs. A. P.
... ..	100 0 0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100, with an additional Rs. 5 for every 50 members or less number than 50 members, after the first 100.	
For registration of a Company in which the number of members is stated, in the articles of association to be unlimited, a fee of	... .. 400 0 0
For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members, or less than 50 members, of such increase	... .. 5 0 0
Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.	
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.	
For registering any document hereby required or authorized to be registered other than the memorandum of association	... .. 5 0 0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of	... .. 5 0 0

### FORM D.

#### FORM OF STATEMENT REFERRED TO IN PART III. OF THE ACT.

\* The Capital of the Company is Rs.                      divided into                      shares of                      each.

The number of shares issued is                      . Calls to the amount of Rs.                      per share have been made, under which the sum of Rs.                      has been received.

The liabilities of the Company on the first day of January (or July) were—

Debts owing to sundry persons by the Company :—

- Under decree, Rs.
- On mortgages or bonds, Rs.
- On notes, bills, or hundis, Rs.
- On other contracts, Rs.
- On estimated liabilities, Rs.

\* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

The assets of the Company on that day were—  
 Government securities [*stating them*], Rs.  
 Bills of exchange, hundis, and promissory notes, Rs.  
 Cash at the bankers, Rs.  
 Other securities, Rs.

## SECOND SCHEDULE.

(*See section 95*).

### FORM A.

#### MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

- 1st.—The name of the Company is “The \_\_\_\_\_ Company,  
 Limited.”
- 2nd.—The registered office of the Company will be situate in \_\_\_\_\_
- 3rd.—The objects for which the Company is established are \_\_\_\_\_  
 “\_\_\_\_\_ and the doing all such other things as are in-  
 cidental or conducive to the attainment of the above objects.”
- 4th.—The liability of the members is limited.
- 5th.—The capital of the Company is Rs. \_\_\_\_\_ divided  
 into \_\_\_\_\_ shares of Rs. \_\_\_\_\_ each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names:—

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A. B. of	
2. C. D. „	
3. E. F. „	
4. G. H. „	
5. I. J. „	
6. K L. „	
7. M. N. „	
Total shares taken	...

Dated the \_\_\_\_\_ day of \_\_\_\_\_

Witness to the above signatures.

O. P. of \_\_\_\_\_



# FORM B.

## MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

### *Memorandum of Association.*

- 1st.—The name of the Company is "The Mutual Calcutta Marine Association, Limited."
- 2nd.—The registered office of the Company will be situate in Calcutta.
- 3rd.—The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."
- 4th.—Every member of the Company undertakes to contribute the assets of the Company. in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and, for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding Rs. 100.

We the several persons whose names and addresses are subscribed are desirous of being formed into a Company in pursuance of this memorandum of association.

### *Names, Addresses, and Descriptions of Subscribers.*

1. A. B. of
2. C. D. "
3. E. F. "
4. G. H. "
5. I. J. "
6. K. L. "
7. M. N. "

Dated the            day of

Witness to the above signatures.

O. P. of

### *Articles of Association to accompany preceding Memorandum of Association.*

- (1.) The Company, for the purpose of registration, is declared to consist of five hundred members.
- (2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

*Definition of Members.*

(3.) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General Meetings.*

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meeting shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at General Meetings.*

(10.) Seven days' notice at the least, specifying the place, the day, and the hour, of meeting, and, in case of special business, the general nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say: if the members of the Company, at the time of the meeting, do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five

additional members up to fifty, and one for every ten additional members after fifty ; with this limitation, that no quorum shall in any case exceed thirty.

(13) If, within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved : In any other case, it shall stand adjourned to the same day in the following week, at the same time and place ; and, if, at such adjourned meeting, a quorum of members is not present, it shall be adjourned *sine die*.

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15.) If there is no such chairman, or if, at any meeting, he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place ; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs ; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

### *Votes of Members.*

(19.) Every member shall have one vote, and no more.

(20.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator ; if any member is a minor, he may vote by his guardian, or any one of his guardians if more than one.

(21.) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22.) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

*Company limited.*

I, \_\_\_\_\_ of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_ of \_\_\_\_\_, as my proxy, to vote for me, and on my behalf, at the [ordinary or extraordinary, as the case may be] general meeting of the Company to be held on the day of \_\_\_\_\_, and at any adjournment thereof [or at any meeting of the Company that may be held in the year \_\_\_\_\_].

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_.

Signed by the said \_\_\_\_\_ in the presence of \_\_\_\_\_.

### *Directors.*

(25.) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

### *Powers of Directors.*

(27.) The business of the Company shall be managed by the directors who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting, but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

### *Election of Directors.*

(28.) The directors shall be elected annually by the Company in general meeting.

### *Business of Company.*

[Here insert rules as to mode in which business of insurance is to be conducted.]

### *Accounts.*

(29.) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30.) The first audit-committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34.) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

### *Notices.*

(35.) A notice may be served by the Company upon any member either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

### *Winding-up.*

(37.) The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Indian Companies Act, 1882,\* is passed, requiring the Company to be wound up voluntarily.

### *Names, Addresses, and Descriptions of Subscribers.*

1. A. B. of	...	...	...	Merchant.
2. C. D. "	...	...	...	"
3. E. F. "	...	...	...	"
4. G. H. "	...	...	...	"
5. I. J. "	...	...	...	"
6. K. L. "	...	...	...	"
7. M. N. "	...	...	...	"
dated the	day of		18	.

Witness to the above signatures :

O. P. of

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\* Act VI. of 1882, i. e., this Act (*supra*).

## FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED  
BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.*Memorandum of Association.*

1st.—The name of the Company is "The Hotel Company Limited."

2nd.—The registered office of the Company will be situate in .

3rd.—The objects for which the Company is established are "the facilitating travelling in . by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and, for the adjustment of the rights of the contributors amongst themselves, such amount as may be required, not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses, and Descriptions of Subscribers.*

1. A. B. of
2. C. D. "
3. E. F. "
4. G. H. "
5. I. J. "
6. K. L. "
7. M. N. "

Dated the      day of      18 .

Witness to the above signatures :

O. P. of

*Articles of Association to accompany preceding Memorandum of Association.*

1. The capital of the Company shall consist of five lakhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. A. B. of 2. C. D. " 3. E. F. " 4. G. H. " 5. I. J. " 6. K. L. " 7. M. N. "	
Total shares taken ...	

Dated the            day of            18 .

Witness to the above signatures :

O. P. of

## FORM D.

### MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

#### *Memorandum of Association.*

1st.—The name of the Company is "The Patent Company."

2nd.—The registered office of the Company will be situate in .

3rd.—The objects for which the Company is established are "the working of a patent method of            , of which method O. P. of            is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses, and Descriptions of Subscribers.*

1. A. B. of
2. C. D. „
3. E. F. „
4. G. H. „
5. I. J. „
6. K. L. „
7. M. N. „

Dated the                      day of                      18 .

Witness to the above signatures :

Q. R. of

*Articles of Association to accompany the preceding Memorandum of Association.*

*Capital of the Company.*

The capital of the Company is twenty thousand rupees divided into twenty shares of one thousand rupees each.

*Application of Table A.*

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, Addresses, and descriptions of subscribers.	Number of shares taken by subscribers.
1. A. B. of	
2. C. D. „	
3. E. F. „	
4. G. H. „	
5. I. J. „	
6. K. L. „	
7. M. N. „	
Total shares taken                      ...	

Dated the                      day of                      18 .

Witness to the above signatures :

Q. R. of



## FORM E.

AS REQUIRED BY THE SECOND PART OF THE FOREGOING ACT.

Summary of capital and shares of the                      Company, made up to  
the                      day of                      .

Nominal capital, Rs.                      , divided into                      shares  
of Rs.                      each                      .

Number of shares taken up to the                      day of                      ,

There has been called up on each share, Rs.                      .

Total amount of calls received Rs.                      .

Total amount of calls unpaid, Rs.                      .

List of persons holding shares in the                      Company on the  
day of                      , and of persons who have held shares therein at any time  
during the year immediately preceding the said                      day of                      ,  
showing their names and addresses, and an account of the shares so held.

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### ACCOUNT OF SHARES.

Shares held by existing members on the day of	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.		REMARKS.
	Number.	Date of transfer.	Number.	Date of transfer.	

## APPENDIX I.

(Table B in Schedule to Act XIX. of 1857.)\*

## REGULATIONS FOR MANAGEMENT OF THE COMPANY.

*Shares.*

1. No person shall be deemed to have accepted any share in the Company unless he has testified his acceptance thereof by writing under his hand in such form as the Company, from time to time, directs.

2. The Company may, from time to time, make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons, and at the times and places, appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

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\* See s. 2 (c) of the Indian Companies Act (VI. of 1882), *supra*, p. 10. The table is reproduced here as an Appendix to Act VI. of 1882 for convenience of reference.

*Transmission of Shares.*

11. The executors, or administrators, or representatives, of a deceased shareholder shall be the only persons recognized by the company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any shareholder, or, in consequence of the marriage of any female shareholder, or in any way other than by transfer, may be registered as a shareholder upon such evidence being produced as may, from time to time, be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by executing to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder

*Forfeiture of Shares.*

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made, payable on and at which such call is to be paid; it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall, notwithstanding, be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

*Increase in Capital.*

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the for-

feiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

### *General Meetings.*

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the "first Monday in February" \* in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say): If the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty with this limitation that it shall not be necessary for any quorum in any case to exceed forty.

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\* The portion quoted had originally been as follows: "

day of ".

33. If, within one hour from the time appointed for the meeting, the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting, the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

### *Votes of Shareholders.*

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and, if any shareholder is a minor, he may vote by his guardian or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered

office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

### *Directors.*

45. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of Association.

46. Until directors are appointed, the subscribers of the Memorandum of Association shall, for all the purposes of this Act, be deemed to be directors.

### *Powers of Directors.*

47. The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by this Act,\* or by the articles of Association (if any), declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the Articles of Association to the provisions of this Act,\* and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

### *Disqualification of Directors.*

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is concerned in, or participates in the profits of, any contract with the Company;

if he participates in the profits of any work done for the Company.

But the above rules shall be subject to the following exceptions: that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and, if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

### *Rotation of Directors.*

49. At the first ordinary meeting after the incorporation of the Company, the whole of the directors shall retire from office; and, at the first ordinary meeting in every subsequent year, one-third of the directors for

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\* Should now be read as referring to Act VI. of 1882, *supra*.



the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuig the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

52. The Company, at the general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of persons.

53. If, at any meeting at which an election of directors ought to take place, no such election is made, the meeting shall stand adjourned till the next day, at the same time and place; and, if, at such adjourned meeting, no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotations such increased or reduced number is to go out of office.

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

### *Proceedings of Directors.*

56. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business; questions arising at any meeting shall be decided by a majority of votes; in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote; a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if, at any meeting, the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committees so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings if no such chairman is elected, or, if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper, questions at any meeting shall be determined by a majority of votes of the

members present; and, in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The directors shall cause minutes to be made in books provided for the purpose—

- (1) of all appointments of officers made by the directors;
- (2) of the names of the directors present at each meeting of directors and committees of directors;
- (3) of all orders made by the directors and committees of directors and
- (4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

### *Dividends.*

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

*Accounts.*

69. Once at the least in every year, the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters, every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure, which may, in fairness, be distributed over several years, has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at, or sent by post to, the registered address of every shareholder.

*Audit.*

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company, and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall, at all reasonable times, have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and, in every such report, they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

#### *Notices.*

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same or sending them through the post in a letter addressed to the shareholders at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

## FORM OF BALANCE-SHEET

Dr. *Balance-sheet\* of the*

## CAPITAL AND LIABILITIES.

I.—CAPITAL	SHOWING—	RS. A. P.	RS. A. P.
1	<p>The total amount received from the shareholders showing also—</p> <p>(a) The number of shares.</p> <p>(b) The amount paid per share.</p> <p>(c) If any arrears of calls, the nature of the arrear, and the names of the defaulters.</p> <p>(Any arrears due from any Director or officer of the Company to be separately stated.)</p> <p>(d) The particulars of any forfeited shares.</p>		
II.—DEBTS AND LIABILITIES OF THE COMPANY.	SHOWING—		
	2	The amount of loans on mortgage or debenture bonds ...	
	3	<p>The amount of debts owing by the Company, distinguishing—</p> <p>(a) Debts for which acceptances have been given ...</p> <p>(b) Debts to tradesmen for supplies of stock-in-trade or other articles ...</p> <p>(c) Debts for law-expenses ...</p> <p>(d) Debts for interest on debentures or other loans ...</p> <p>(e) Unclaimed dividends ...</p> <p>(f) Debts not enumerated above.</p>	
VI.—RESERVE FUND	SHOWING—		
		The amount set aside from profits to meet contingencies ...	
VII.—PROFIT AND LOSS	SHOWING—		
		The disposable balance for payment of dividend, &c. ...	
		Claims against the Company not acknowledged as debts ...	
CONTINGENT LIABILITIES—		Moneys for which the Company is contingently liable ...	

\* See clauses 71 and 72 of

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

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82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall, at all reasonable times, have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

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pany, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it shall think fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement, or carrying the same into effect :

Provided, always, that it shall not be lawful to expend any part of the capital of the Company in any such purchase.

8. The High Court may confirm, either wholly or in part,

Ground on which Court may any such alteration as aforesaid with confirm a proposed alteration. respect to the objects of the Company if it appears that the alteration is required in order to enable the Company—

- (a) to change the place of the registered office of the Company from one part of British India to another; or
- (b) to carry on its business more economically or more efficiently; or
- (c) to attain its main purpose by new or improved means; or
- (d) to enlarge or change the local area of its operations; or
- (e) to carry on some business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the Company; or
- (f) to restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

9. (1) Where a Company has altered the provisions of its

Registration of order together with memorandum as altered or substituted memorandum and articles, and consequences thereof.

memorandum of association or deed of settlement with respect to the place of its registered office, or to the objects of the Company, or has altered the form

of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, a certified copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so

altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the Company to the Registrar of Joint Stock Companies within three months from the date of the order, and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with.

(2) When any such alteration as aforesaid involves a transfer of the registered office to a part of British India other than that in which the office is at which the Company is registered, a certified copy of the order confirming such change shall be delivered by the Company to the Registrar of Joint Stock Companies in each of such parts, and each of such Registrars shall register the same, and shall certify under his hand the registration thereof, and the Registrar for the part from which such office is transferred shall send to the Registrar for the other part all documents relating to the Company registered in his office.

(3) From the date of such registration (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the Company, or, as the case may be, such substituted memorandum and articles of association shall apply to the Company in the same manner as if the Company were a Company registered under Part I. of the Indian Companies Act, 1882,\* with such memorandum and articles of association, and the Company's deed of settlement shall cease to apply to the Company.

(4) For every registration under this section, there shall be payable to the Registrar of Joint Stock Companies a fee of five rupees.

**10.** No such alteration as aforesaid shall have any operation

Effect of failure to register until registration thereof has been duly within three months. effected under the last-foregoing section, and, if such registration shall not have been effected within three months next after the date of the order of the Court confirming the alteration, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months, become and be absolutely null and void :

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\* Act VI. of 1882, *supra*.

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

11. In section 65 of the Indian Companies Act, 1882,\* for  
Amendment of section 65 the words "in such language or lan-  
of Act VI. of 1882. guages," the second time they occur,  
the words "in the English language" shall be substituted.

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\* Act VI. of 1882, *supra*.

## APPENDIX III.

## ACT NO. IV. OF 1900.

[ The Indian Companies (Branch Registers) Act, 1900 ].\*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 16th February 1900.)

*An Act to authorize certain Companies registered under the Indian Companies Act, 1882,† to keep Branch Registers of their Members in the United Kingdom.*

WHEREAS it is expedient to authorize certain Companies registered under the Indian Companies Act, 1882,† to keep branch registers of their members in the United Kingdom; It is hereby enacted as follows :—

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Companies (Branch Registers) Act, 1900;

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) the expression "Company" means a Company registered under the Indian Companies Act, 1882,† having its capital divided into shares; and

(b) the expression "shares" includes stock.

\* For Statement of Objects and Reasons see Gazette of India, 1899, Pt. V. p. 74; for Report of the Select Committee, see *ibid*, 1900, p. 37; for Proceedings in Council see *ibid*, 1900, Pt. VI., p. 185; *ibid*, 1900, pp. 10 and 40.

† Act VI. of 1882 *supra*.

8. (1) Any Company may, if authorized so to do by its regulations as originally framed, or as altered by special resolution, cause to be kept in the United Kingdom a branch

Power to keep branch registers in the United Kingdom.

register or registers of members.

(2) The Company shall give to the Registrar of Joint-Stock Companies notice of the situation of the office where any such branch register (hereinafter called a "British register") is kept, and any change therein, and of the discontinuance of any such office in the event of the same being discontinued, and the Registrar shall record such notice.

(3) A British register shall, as regards the particulars entered therein, be deemed to be a part of the Company's register of members kept under the Indian Companies Act, 1882,\* and shall be *prima-facie* evidence of all particulars entered therein. Every such branch register shall be kept in the manner provided by section 47 of the said Act.\*

(4) The Company shall transmit to its registered office in India a copy of every entry in its British register or registers as soon as may be after such entry is made, and shall cause to be kept at such office, duly entered up from time to time, a duplicate or duplicates of its British register or registers. The provisions of section 55 and section 60 of the Indian Companies Act, 1882,\* shall apply to every such duplicate, and every such duplicate shall, for the purposes of the said Act,\* be deemed to be part of the register of members of the Company.

(5) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a British register shall be distinguished from the shares registered in the Indian register, and no transaction with respect to any shares registered in a British register shall, during the continuance of the registration of such shares in such British register, be registered in any other register.

(6) The Company may discontinue any British register, and thereupon all entries in that register shall be transferred to some other British register kept by the Company in the United Kingdom, or to the register of members kept at the registered office of the Company in India.

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\* Act VI, of 1882, *supra*

4. The Governor-General in Council may, by notification in Power to make rules and the *Gazette of India*, make rules and prescribe forms. prescribe forms for the purpose of carrying into effect the provisions of this Act.

5. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Indian Companies Act, 1882.\*

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\* Act VI. of 1882, *supra*.

# THE INDIAN CONTRACT ACT (NO. IX.), 1872.

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SCHEDULE.

ENACTMENTS REPEALED.

## THE INDIAN CONTRACT ACT

(No. IX.), 1872.\*

[As modified up to 31st December 1910.]

(RECEIVED THE G. G.'s ASSENT ON THE 25TH APRIL 1872.)

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

Preamble.

## PRELIMINARY.

Short title. 1. This Act may be called "The Indian Contract Act, 1872."

Extent; It extends to the whole of British India,† and it shall come into force on the first day of September 1872.

Commencement.

\* For the Statement of Objects and Reason for the Bill, which was based on a Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated July 6, 1866, see *Gazette of India*, 1867, Extraordinary, p. 34. For the Report of the Select Committee, see *ibid*, 1871, p. 313. and *ibid*, 1872, p. 527.

The chapters and sections of the Transfer of Property Act (IV. of 1882) which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX. of 1872.—See Act IV. of 1882, s. 4.

† Act IX. of 1872 has been declared in force in—

- (1) the Santhal Parganas [see the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1897), s. 3];
- (2) the Arakan Hill District [see the Arakan Hill District Laws Regulation (IX. of 1874), s. 3];
- (3) Upper Burmah (except the Shan States), by Act XIII. of 1868, s. 4;
- (4) British Baluchistan [see the British Baluchistan Laws Regulation (I. of 1890), s. 3].

Act IX. of 1872 has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in—

- (1) the North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505);
- (2) the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

Act IX. of 1872 has been extended, by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874), to the whole of Upper Burma except the Shan States (see *Gazette of India*, 1893, Pt. II., p. 272).



The enactments mentioned in the schedule hereto are repealed to the extent specified in the third column thereof; but nothing herein contained shall affect the provisions of any Statute, Act, or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context:—

Interpretation-clause—  
 (a).—When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:  
 “Proposal :”  
 (b).—When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted,\* becomes a promise:

(c).—The person making the proposal is called the ‘promisor,’ and the person accepting the proposal is called the ‘promisee’:  
 “Promisor” and “promisee”

(d).—When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:  
 “Consideration :”

(e).—Every promise and every set of promises, forming the consideration for each other, is an agreement:  
 “Agreement :”

(f).—Promises which form the consideration or part of the consideration for each other are called reciprocal promises:  
 “Reciprocal promises :”

(g).—An agreement not enforceable by law is said to be void.  
 “Void agreement :”

(h).—An agreement enforceable by law is a contract:  
 “Contract :”

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\* But see s. 4, III. (b), *infra*.

(i.)—An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract :  
 “Voidable contract :”

(j.)—A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.  
 “Void contract.”

## CHAPTER I.

### OF THE COMMUNICATION, ACCEPTANCE, AND REVOCATION OF PROPOSALS.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate such proposal, acceptance, or revocation, or which has the effect of communicating it.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.  
 Communication when complete.

The communication of an acceptance is complete,  
 as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor ;  
 as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,  
 as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it ;  
 as against the person to whom it is made, when it comes to his knowledge.

### *Illustrations.*

(a.) A proposes, by letter, to sell a house to B at a certain price :  
 The communication of the proposal is complete when B receives the letter.

(b.) B accepts A's proposal by a letter sent by post :

The communication of acceptance is complete,  
as against A, when the letter is posted ;  
as against B, when the letter is received by A.

(c) A revokes his proposal by telegram :

The revocation is complete as against A, when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram : B's revocation is complete, as against B, when the telegram is despatched, and, as against A, when it reaches him.

**5.** A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

Revocation of proposals and acceptances.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

#### *Illustrations.*

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post :

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

**6.** A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party ;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time without communication of the acceptance.

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance ; or

(4) by the death or insanity of the proposer if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

**7.** In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted.

ed. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Acceptance by performing conditions or receiving consideration.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

## CHAPTER II.

### OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS.

10. All agreements are contracts\* if they are made by the free consent of parties competent to contract for a lawful consideration,† and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in British India, and not hereby expressly repealed, by which any contract is required to be made in writing,‡ or in the presence of witnesses, or any law relating to the registration of documents.§

\* See s. 2, cl. (h), *supra*.

† See s. 25, Expl. 2, and s. 102 *infra*.

‡ See, for example, the following:—

(1) s. 25, *infra*;

(2) the Indian Copyright Act (XX. of 1847), s. 5;

(3) the Conveyance of Land Act (XXXI. of 1854), ss. 14, 18;

(4) the Merchant Shipping Act (Stat. 57 & 58 Vict., c. 60) s. 24;

(5) the Presidency Banks Act (XI. of 1876), s. 9;

(6) the Transfer of Property Act (IV. of 1882), ss. 54, 59, 107, 123;

(7) the Indian Companies Act (VI. of 1882), ss. 6, 39, 46, 67;

(8) the Apprentices Act (XIX. of 1850), s. 8;

Cf. also s. 4 of the Workmen's Breach of Contract Act (XIII. of 1859); and the Carriers Act (III. of 1865), ss. 6, 7.

§ See now the Indian Registration Act (XVI. of 1908.)

**11.** Every person is competent to contract who is of the age of majority according to the law to which he is subject,\* and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

**12.** A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it, and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.†

#### *Illustrations.*

(a.) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b.) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

**13.** Two or more persons are said to consent when they agree upon the same thing in the same sense.  
“Consent” defined.

**14.** Consent is said to be free when it is not caused by—  
“Free consent” defined.

- (1) coercion as defined in section 15, or
- (2) undue influence as defined in section 16, or
- (3) fraud as defined in section 17, or
- (4) misrepresentation as defined in section 18, or
- (5) mistake, subject to the provisions of sections 20, 21, and 22.

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\* See the Indian Majority Act (IX. of 1865). For exception to this rule in the case of emigrants, see s. 11 of the Assam Labour and Emigration Act (I. of 1882) and s. 39 of the Indian Emigration Act (XXI. of 1883.)

† But see s. 68, *infra*.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code,\* or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

*Explanation.*—It is immaterial whether the Indian Penal Code\* is or not in force in the place where the coercion is employed.

*Illustration.*

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code.

A afterwards sues B for breach of contract at Calcutta :

A has employed coercion, although his act is not an offence by the law of England, and although section 505 of the Indian Penal Code was not in force at the time when, or place where, the act was done.

16.† (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) In particular, and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other ; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction

\* Act XLV. of 1860.

† S. 16 has been substituted for the original by the Indian Contract Act Amendment Act (VI. of 1899), s. 2.

appears, on the face of it, or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provision of section III of the Indian Evidence Act, 1872.\*

### *Illustrations.*

(a.) A, having advanced money to his son, B, during his minority, upon B's coming of age, obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance: A employs undue influence.

(b.) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services: B employs undue influence.

(c.) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable: It lies on B to prove that the contract was not induced by undue influence.

(d.) A applies to a banker for a loan at a time when there is stringency in the money-market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

**17. "Fraud"** means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,† with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1.)—The suggestion, as a fact, of that which is not true by one who does not believe it to be true:

(2.)—The active concealment of a fact by one having knowledge or belief of the fact:

(3.)—A promise made without any intention of performing it:

(4.)—Any other act fitted to deceive;

(5.)—Any such act or omission as the law specially declares to be fraudulent.

*Explanation.*—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless

\* Act I. of 1872.

† Compare s. 238, *infra*.  
Act IX., 1872.—2.

the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,\* or unless his silence is in itself equivalent to speech.

### *Illustrations.*

(a.) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness: This is not fraud in A.

(b.) B is A's daughter, and has just come of age: Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c.) B says to A, "if you do not deny it, I shall assume that the horse is sound." A says nothing: Here A's silence is equivalent to speech.

(d.) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract: A is not bound to inform B.

"Misrepresentation" defined. 18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which he the subject of the agreement.

19. When consent to an agreement is caused by coercion,† Voidability of agreements fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

\* See s. 143, *infra*.

† In s. 19, the words, "undue influence," have here been omitted, being repealed by the Indian Contract Act Amendment Act (VI. of 1899), s. 3.



*Exception.*—If such consent was caused by misrepresentation or by silence fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

*Explanation.*—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

### *Illustrations.*

(a.) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory: The contract is voidable at the option of B.

(b.) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory: The contract is not voidable on account of A's misrepresentation.

(c.) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage: B may either avoid the contract, or may insist on its being carried out, and the mortgage-debt redeemed.

(d.) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value: The contract is voidable at the option of A.

(e.) A is entitled to succeed to an estate at the death of B. B dies. C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate: The sale is voidable at the option of A.

**19A.\*** When consent to an agreement is caused by undue influence, the agreement is a contract induced by undue influence. voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely, or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

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\* S. 19A has been added by the Indian Contract Act Amendment Act (VI. of 1899), s. 3.

*Illustrations.*

(a.) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note: If B sues on this bond, the Court may set the bond aside.

(b.) A, a money lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 12 per cent, per month: The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

**20.** Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

*Explanation.*—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

*Illustrations.*

(a.) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts: The agreement is void.

(b.) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact: The agreement is void.

(c.) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact: The agreement is void.

**21.** A contract is not voidable because it was caused by a mistake as to any law in force in British India; but a mistake as to a law not in force in British India has the same effect as a mistake of fact.

*Illustration.*

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation: The contract is not voidable.

A and B make a contract grounded on an erroneous belief as to the law regulating bills of exchange in France: The contract is voidable.

Contract caused by mistake of one party as to matter of fact.

**22.** A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not. **23.** The consideration or object of an agreement is lawful unless—

it is forbidden by law;\* or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent: or

involves or implies injury to the person or property of another, or the Court regards it as immoral† or opposed to public policy.‡

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement, of which the object or consideration is unlawful, is void.

#### *Illustrations.*

(a.) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b.) A promises to pay B 1,000 rupees at the end of six months if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c.) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise: and these are lawful considerations.

(d.) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e.) A, B, and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud: The agreement is void, as its object is unlawful.

(f.) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A: The agreement is void, as the consideration for it is unlawful.

(g.) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal: The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

\* See ss. 26, 27, 28, 30, *infra*.

† See 9 B. L. R. (App.) 37.

‡ See 4 B. L. R. (O. C. J.) 1; 9 B. L. R. (App.) 38; 11 B. L. R. 129.

(h.) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken; The agreement is void, as its object is unlawful.

(i.) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price, which B has paid; The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j.) A, who is B's mukhtar, promises to exercise his influence as such with B in favour of C, and C promises to pay 1,000 rupees to A: The agreement is void, because it is immoral.

(k.) A agrees to let her daughter to hire to B for concubinage: The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code.

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### *Void Agreements.*

**24.** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void if consideration and objects unlawful in part.

### *Illustration.*

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year: The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

Agreement without consideration void unless—

**25.** An agreement made without consideration is void unless—

(1) it is expressed in writing, and registered under the law for the time being in force for the registration of documents,\* and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

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\* In s. 25, the word "documents" has been substituted for the word "assurances" by the Repealing and Amending Act (XII. of 1891). For the law relating to the registration of documents, see now the Indian Registration Act (XVI. of 1908).

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless or is a promise to compensate for something done;

(3) it is a promise, made in writing, and signed by the person or is a promise to pay a debt barred by Limitation Law, to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay, wholly or in part, a debt of which the creditor might have enforced payment but for the law for the limitation of suits.\*

In any of these cases, such an agreement is a contract.

*Explanation 1.*—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

*Explanation 2.*—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

#### *Illustrations.*

(a.) A promises, for no consideration, to give to B Rs. 1,000: This is a void agreement.

(b.) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing, and registers it: This is a contract.

(c.) A finds B's purse, and gives it to him. B promises to give A Rs. 50: This is a contract.

(d.) A supports B's infant son. B promises to pay A's expenses in so doing: This is a contract.

(e.) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay Rs. 500 on account of the debt: This is a contract.

(f.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given: The agreement is a contract notwithstanding the inadequacy of the consideration.

(g.) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given: The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

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\* See now the Indian Limitation Act (IX. of 1908).

Agreement in restraint of marriage void.

**26.** Every agreement in restraint of the marriage of any person other than a minor\* is void.

**27.** Every agreement, by which any one is restrained from exercising† a lawful profession, trade, or business of any kind, is to that extent void.

*Exception 1.*—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

*Exception 2.*—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last-preceding exception.

*Exception 3.*—Partners may agree that some one or all of them or during continuance of partnership will not carry on any business other than that of the partnership during the continuance of the partnership.

**28.** Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

*Exception 1.*—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

\* During his or her minority, as to which, see Act IX. of 1875.

† The words, "restrained from exercising," do not mean an absolute restriction, and are intended to apply to a partial restriction—a restriction limited to some particular place.—*Per Couch, C.J.*, 14 B. L. R. 85.

*When such a contract has been made, a suit may be brought for its specific performance; and, if a suit other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.\**

**Exception 2.**—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.†

**29.** Agreements, the meaning of which is not certain, or capable of being made certain, are void.

#### *Illustrations.*

(a.) A agrees to sell to B 'a hundred tons of oil.' There is nothing whatever to show what kind of oil was intended: The agreement is void for uncertainty.

(b.) A agrees to sell to B one hundred tons of oil of a specified description known as an article of commerce: There is no uncertainty here to make the agreement void.

(c.) A, who is a dealer in coccanut-oil only, agrees to sell to B 'one hundred tons of oil:'. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d.) A agrees to sell to B 'all the grain in my granary at Ramnagar'. There is no uncertainty here to make the agreement void.

(e.) A agrees to sell to B 'one thousand maunds of rice at a price to be fixed by C:'. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f.) A agrees to sell to B 'my white horse for rupees five hundred or rupees one thousand:'. There is nothing to show which of the two prices was to be given. The agreement is void.

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\* In s. 28, the italicized clause of *Excep. 1* has been repealed by the Specific Relief Act (I. of 1877) throughout British India, except in the scheduled districts, in which that Act is not in force.

† See Part V. of the Code of Civil Procedure (Act XIV. of 1882): but, see now Act V. of 1908. See also the Indian Companies Act (VI. of 1882) ss. 206 to 211.

**30.** Agreements by way of wager are void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize, or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.\*

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code† apply.

Section 294A of the Indian Penal Code not affected.

## CHAPTER III.

### OF CONTINGENT CONTRACTS.

**31.** A 'contingent contract' is a contract to do or not to do something if some event collateral to such contract does or does not happen.

"Contingent contract" defined.

#### *Illustration.*

A contracts to pay B Rs. 10,000 if B's house is burnt: This is a contingent contract.

**32.** Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

Enforcement of contracts contingent on an event happening.

If the event becomes impossible, such contracts become void.

#### *Illustrations.*

(a.) A makes a contract with B to buy B's horse if A survives C: This contract cannot be enforced by law unless and until C dies in A's lifetime.

\* Cf. the Gaming Act, 1845 (Stat. 8 & 9 Vict., c. 109), s. 18.

† Act XLV. of 1860.



(b.) A makes a contract with B to sell a horse to B at a specified price if C, to whom the horse has been offered, refuses to buy him: The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c.) A contracts to pay B a sum of money when B marries C. C dies without being married to B: The contract becomes void.

### 33. Contingent contracts to do or not to do anything if

Enforcement of contracts an uncertain future event does not contingent on an event not happen can be enforced when the happening of that event becomes impossible, and not before.

#### *Illustration.*

A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk: The contract can be enforced when the ship sinks.

### 34. If the future event on which a contract is contingent

When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person. is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

#### *Illustration.*

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die, and that C may afterwards marry B.

### 35. Contingent contracts to do or not to do anything if

When contracts become void which are contingent on happening of specified event within fixed time. a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

Contingent contracts to do or not to do anything if a specified

When contracts may be enforced which are contingent on specified event not happening within fixed time. uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired, and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

*Illustrations.*

(a.) A promises to pay B a sum of money if a certain ship return within a year : The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b.) A promises to pay B a sum of money if a certain ship does not return within a year : The contract may be enforced if the ship does not return within the year, or is burnt within the year.

**36.** Contingent agreements to do or not to do anything if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

*Illustrations.*

(a.) A agrees to pay B 1,000 rupees if two straight lines should enclose a space : The agreement is void.

(b.) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement ; The agreement is void.

## CHAPTER IV.

## OF THE PERFORMANCE OF CONTRACTS.

*Contracts which must be performed.*

**37.** The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance\* unless a contrary intention appears from the contract.

*Illustrations.*

(a.) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day : A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b.) A promises to paint a picture for B by a certain day at a certain price. A dies before the day : The contract cannot be enforced either by A's representatives or by B.

\* This probably means "to the extent of the assets received by them such, and not duly applied."—See *Madho Dass v. Radha Mal*, 9 Punjab Record 213.

**39.** Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:—

(1.) It must be unconditional:

(2.) It must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3.) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

#### *Illustration.*

A contracts to deliver to B at his warehouse, on the 1st March 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

**39.** When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract\* unless he has signified, by words or conduct, his acquiescence in its continuance.

#### *Illustrations.*

(a.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre: B is at liberty to put an end to the contract.

(b.) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two

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\* And see s. 75, *infra*.

months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night: B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

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*By whom Contracts must be performed.*

**40.** If it appears from the nature of the case that it was the Person by whom promise intention of the parties to any contract is to be performed. that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

*Illustrations.*

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B: A must perform this promise personally.

**41.** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

**42.** When two or more persons have made a joint promise, then (unless a contrary intention appears by the contract) all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

**43.** When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one "or more"\* of such joint promisors to perform the whole of the promise.

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\* In s. 43, the words "or more" have been inserted by the Repealing and Amending Act (XII. of 1891).

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

*Explanation.*—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

#### *Illustrations.*

(a) A, B, and C jointly promise to pay D 3,000 rupees: D may compel either A or B or C to pay him 3,000 rupees.

(b.) A, B, and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one half of his debts: C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(c.) A, B, and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole: A is entitled to receive 1,500 rupees from B.

(d.) A, B, and C are under a joint promise to pay D 3,000 rupees. A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum: They are entitled to recover it from C.

**44.** Where two or more persons have made a joint promise, a release of one of such joint promisors joint contractor. by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.\*

**45.** When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with

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\* See s. 138, *infra*.

the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.\*

*Illustration.*

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and, after the death of C, with the representatives of B and C jointly.

*Time and Place for Performance.*

**46.** Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise where no application is to be made, and no time is specified.

*Explanation.*—The question—"What is a reasonable time"—is, in each particular case, a question of fact.

**47.** When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day, and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified, and no application to be made.

*Illustration.*

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received: A has not performed his promise.

**48.** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place, and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

*Explanation.*—The question—"What is a proper time and place"—is, in each particular case, a question of fact.

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\* For an exception to s. 45 in case of Government Securities, see the Indian Securities Act (XIII. of 1886), s. 5.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Place for performance of promise where no application to be made, and no place fixed.

*Illustration :*

A undertakes to deliver a thousand maunds of jute to B on a fixed day : A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner, or at any time, which the promisee prescribes or sanctions.

*Illustrations :*

(a.) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails: There has been a good payment by B.

(b.) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement: This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c.) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt: The delivery of the goods operates as a part-payment.

(d.) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post: The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

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*Performance of Reciprocal Promises.*

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

*Illustrations :*

(a.) A and B contract that A shall deliver goods to B to be paid for by B on delivery :

A need not deliver the goods unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods unless A is ready and willing to deliver them on payment.

(b.) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery:

A need not deliver unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment unless A is ready and willing to deliver the goods on payment of the first instalment.

## 52. Where the order in which reciprocal promises are to be

Order of performance of performed is expressly fixed by the reciprocal promises. contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

### *Illustrations:*

(a.) A and B contract that A shall build a house for B at a fixed price: A's promise to build the house must be performed before B's promise to pay for it.

(b.) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

## 53. When a contract contains reciprocal promises, and one

Liability of party prevented by event on which contract is to take effect. party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation\* from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

### *Illustration.*

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so: The contract is voidable at the option of B; and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

\* See s. 73, *infra*.



**54.** When a contract consists of reciprocal promises, such, that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

*Illustrations :*

(a.) A hires B's ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship: A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b.) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed: A need not execute the work and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c.) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week: A's promise to deliver need not be performed, and B must make compensation.

(d.) A promises B to sell him one hundred bales of merchandise to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise: B's promise to pay need not be performed, and A must make compensation.

**55.** When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.\*

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

A contract to do an act which, after the contract is made, becomes impossible,† or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the Act becomes impossible or unlawful.‡

Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

#### Illustrations :

(a.) A agrees with B to discover treasure by magic : The agreement is void.

(b.) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad : The contract becomes void.

(c.) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy : A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d.) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated : The contract becomes void when war is declared.

(e.) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act : The contract to act on those occasions becomes void.

\* Compare ss. 62 and 63, *infra*.

† Otherwise than by the default of the contractor.

‡ But see s. 65, *infra*. And see the Specific Relief Act (I. of 1877), s. 13.

**57.** Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract; but the second is a void agreement.

*Illustration.*

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it:

The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

**58.** In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

*Illustration :*

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium:

This is a valid contract to deliver rice, and a void agreement as to the opium.

*Appropriation of Payments.*

**59.** Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

*Illustrations :*

(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June, A pays to B 1,000 rupees: The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees: This payment is to be applied to the discharge of the debt of which B had demanded payment.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.\*

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A and B agree that A shall sell B a house for 10,000 rupees, but that if B uses it as a gambling house, he shall pay A 50,000 rupees for it; The first set of reciprocal promises, namely, to sell the house, and to pay 10,000 rupees for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

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branch alone can be enforced.

*Illustration :*

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium; This is a valid contract to deliver rice, and a void agreement as to the opium.

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**59.** Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

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(a.) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B no other debt of that amount. On the 1st June, A pays to B 1,000 rupees: The payment is to be applied to the discharge of the promissory note.

(b.) A owes B, among other debts, the sum of 567 rupees. B writes to A, and demands payment of this sum. A sends to B 567 rupees: This payment is to be applied to the discharge of the debt of which B had demanded payment.

*Illustrations :*

(a.) A promises to paint a picture for B. B afterwards forbids him to do so: A is no longer bound to perform the promise.

(b.) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable: The whole debt is discharged.

(c.) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A: This payment is a discharge of the whole claim.\*

(d.) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees: This is a discharge of the whole debt, whatever may be its amount.

(e.) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition† of eight annas in the rupee upon their respective demands: Payment to B of 1,000 rupees is a discharge of B's demand.

**64.** When a person, at whose option a contract is voidable,

Consequences of rescission rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.‡

**65.** When an agreement is discovered to be void, or when a

Obligation of person who contract becomes void, any person who has received advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

*Illustrations :*

(a.) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise: The agreement is void, but B must repay A the 1,000 rupees.

(b.) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May: He is bound to pay A for them.

\* See s. 41, *supra*.

† The word "composition" has been substituted for the word "compensation" by the Repealing and Amending Act (XII. of 1891).

‡ See s. 75, *infra*.

(c.) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract: B must pay A for the five nights on which she had sung.

(d.) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing: A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing but must refund to B the 1,000 rupees paid in advance.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.\*

Mode of communicating or revoking rescission of voidable contract.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

#### *Illustration :*

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair :

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

## CHAPTER V.

### OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

68. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account.

one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies

\* See ss. 3 and 5, *supra*.

*Illustrations :*

(a.) A supplies B, a lunatic, with necessities suitable to his condition in life : A is entitled to be reimbursed from B's property.

(b.) A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life : A is entitled to be reimbursed from B's property.

**69.** A person, who is interested in the payment of money

Reimbursement of person paying money due by another, in payment of which he is interested.

which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

*Illustration :*

B holds lands in Bengal on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A : A is bound to make good to B the amount so paid.

**70.** Where a person lawfully does anything for another

Obligation of person enjoying benefit of non-gratuitous act.

person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.\*

*Illustrations :*

(a.) A, a tradesman, leaves goods at B's house by mistake : B treats the goods as his own : He is bound to pay A for them.

(b.) A saves B's property from fire : A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.

**71.** A person who finds goods belonging to another, and

Responsibility of finder of goods.

takes them into his custody, is subject to the same responsibility as a bailee.†

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

**72.** A person to whom money has been paid, or anything delivered, by mistake, or under coercion,‡ must repay or return it.

\* As to suits by minors under s. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act (XV. of 1882), s. 32.

† See ss. 151 and 152, *infra*. As to definition of "bailee," see s. 148, *infra*.

‡ For definition of "coercion," see s. 15, *supra*.



*Illustrations :*

(a.) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C: C is bound to repay the amount to B.

(b.) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods: He is entitled to recover so much of the charge as was illegally excessive.

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## CHAPTER VI.

### OF THE CONSEQUENCES OF BREACH OF CONTRACT.

**73.** When a contract has been broken, the party who suffers Compensation for loss or by such breach is entitled to receive, damage caused by breach of from the party who has broken the contract. contract, compensation for any loss or damage caused to him thereby, which naturally arose, in the usual course of things, from such breach, or which the parties knew when they made the contract to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred, and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it, and had broken his contract.

*Explanation.*—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

*Illustrations :*

(a.) A contracts to sell and deliver 50 maunds of saltpetre to B at a certain price to be paid on delivery. A breaks his promise: B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract-price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b.) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so : A is entitled to receive compensation from B in respect of such trouble and expense.

(c.) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him : B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract-price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d.) A contracts to buy B's ship for 60,000 rupees, but breaks his promise : A must pay to B, by way of compensation, the excess, if any, of the contract-price over the price which B can obtain for the ship at the time of the breach of promise.

(e.) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time which it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls : The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course and its market-price at the time when it actually arrived.

(f.) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract : B is entitled to recover from A the costs of making the repairs conform to the contract.

(g.) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract-price. A breaks his promise : He must pay to B, by way of compensation, a sum equal to the difference between the contract-price and the price for which B could hire a similar ship for a year on and from the first of January.

(h.) A contracts to supply B with a certain quantity of shot at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron : B must pay to A, by way of compensation, the difference between the contract-price of the iron and the sum for which A could have obtained and delivered it.

(i.) A delivers to B, a common carrier, a machine to be conveyed, without delay to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government : A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the

time that delivery of it was delayed but not the loss sustained through the loss of the Government contract.

(j.) A, having contracted with B to supply B with 1,000 tons of iron, at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract: C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k.) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract: A must pay to B, by way of compensation, the difference between the contract-price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l.) A, a builder, contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that before the first of January, it falls down, and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract: A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m.) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty and B becomes liable to pay C a sum of money by way of compensation: B is entitled to be reimbursed this sum by A.

(n.) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined: A is not liable to make good to B anything except the principal sum he contracted to pay together with interest up to the day of payment.

(o.) A contracts to deliver 50 maunds of saltpetre to B on the first of January at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market-price of the first of January. A breaks his promise: In estimating the compensation payable by A to B, the market-price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p.) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks

his promise, and B, having no cotton, is obliged to close his mill: A is not responsible to B for the loss caused to B by the closing of the mill.

(q.) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps: B is entitled to receive from A, by way of compensation, the difference between the contract-price of the cloth and its market-price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r.) A, a ship-owner, contracts which B to convey him from Calcutta to Sydney in A's ship sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money: A is liable to repay to B his deposit with interest and the expense to which he is put by his detention in Calcutta, and the excess, if any of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

#### 74.\* When a contract has been broken, if a sum is named

Compensation for breach in the contract as the amount to be of contract where penalty paid in case of such breach, or if the stipulated for.

*contract contains any other stipulation by way of penalty*, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or, *as the case may be, the penalty stipulated for.*

*Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

*Exception.*—When any person enters into any bail-bond, recognisance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government of India, or of any Local Government, gives any bond for the performance of any public duty or act in which the public are interested,

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\* Para. 1 of s. 74 and the *Explanation* following it have been substituted for the paragraph originally enacted. The difference between the old and the new paragraph is shown by the italicized words, which are newly inserted in the repealed paragraph. The *Explanation* which follows para. 1 is entirely new. See the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (1).

he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

*Explanation.*—A person who enters into a contract with Government does not necessarily thereby undertake any public duty or promise to do an act in which the public are interested.

*Illustrations :*

(a.) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day: B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b.) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta: B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(c.) A gives a recognisance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognisance: He is liable to pay the whole penalty.

(d.)\* A gives B a bond for the repayment of Rs 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default: This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e.)\* A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds: This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f.)\* A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due: This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g.)\* A borrows Rs. 100 from B, and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due: This is a stipulation by way of penalty.

**75.** A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

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\* *Illustrations (d), (e), (f), and (g) have been added to the original ones to s. 74 by the Indian Contract Act Amendment Act (VI. of 1899), s. 4 (2).*

*Illustration:*

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract: B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

## CHAPTER VII.

## SALE OF GOODS.

*When Property in Goods sold passes.*

'Goods' defined.

76. In this Chapter, the word 'goods' means and includes every kind of moveable property.

77. 'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.

'Sale' defined.

Sale how effected.

78. Sale is effected by offer and acceptance of ascertained goods for a price,

or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part-payment, earnest, or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods; the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.\*

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

*Illustrations:*

(a.) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B: The horse becomes B's property on delivery.

\* That is, when the whole is delivered, or when part is delivered in progress of delivery of the whole.—See s. 92, *infra*.

(b.) A sends goods to B with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them: The goods become B's when B retains them.

(c.) B offers A, for his horse, 1,000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer: The horse becomes B's as soon as the proposal is accepted.

(d.) B offers A, for his horse, 1,000 rupees on a month's credit. A accepts the offer: The horse becomes B's as soon as the offer is accepted.

(e.) B, on the first January, offers to A, for a quantity of rice, 2,000 rupees, to be paid on the first March following, the rice not to be taken away till paid for. A accepts the offer: The rice becomes B's as soon as the offer is accepted.

**79.** Where there is a contract for the sale of a thing which has yet to be ascertained, made, or finished,\* the ownership of the thing is not transferred to the buyer until it is ascertained, made, or finished.

*Illustration :*

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price: The ownership of the barge does not pass to B until it is finished.

**80.** Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

*Illustration :*

A, a ship-builder, contracts to sell to B for a stated price a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery: Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered.

Completion of sale of goods when seller has to do anything thereto in order to ascertain price.

**81.** Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

\* See s. 80, *infra*.

*Illustrations.*

(a.) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B: The ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's grounds to B's place of deposit: Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once.

**82.** Where the goods are not ascertained at the time of Completion of sale when making the contract of sale, it is goods are unascertained at necessary to the completion of the sale date of contract. that the goods shall be ascertained.\*

*Illustration.*

A agrees to sell to B 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil: No portion of the oil has become the property of B.

**83.** Where the goods are not ascertained at the time of Ascertainment of goods by making the agreement for sale, but subsequent appropriation. goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

*Illustration.*

A, having a quantity of sugar in bulk more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can: By this appropriation by A and assent by B, the sugar becomes the property of B.

**84.** Where the goods are not ascertained at the time of Ascertainment of goods by making the contract of sale, and, by the seller's selection. terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any

\* See s. 79, *supra*.



goods answering to the contract, and, by his doing so, the goods are ascertained.

*Illustration.*

B agrees with A to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks: The goods have been ascertained.

**85.** Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Transfer of ownership of moveable property when sold together with immoveable.

*Illustration.*

A agrees with B for the sale of a house and furniture: The ownership of the furniture does not pass to B until the house is conveyed to B.

Buyer to bear loss after goods have become his property.

**86.** When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

*Illustrations.*

(a) B offers and A accepts 100 rupees for a stack of fire-wood standing on A's premises the fire-wood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire: B must bear the loss.

(b.) A bids 1,000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls on the seller; if afterwards, on A.

**87.** When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done after the goods are produced in pursuance of the contract by the seller, or by the buyer with the seller's assent.

*Illustrations.*

(a.) A contracts to sell to B for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgement that he

holds the indigo at his disposal: The ownership of the indigo vests in B from the date of the acknowledgement.

(b.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract: The ownership of the crops, when taken possession of, vests in B.

(c.) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession: The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession.

**88.** A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at that time, he has no reasonable expectation of acquiring them otherwise than by purchase.

*Illustration.*

A contracts, on the first January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the first March of the same year. A, at the time of making the contract, is not in possession of any shares: The contract is valid.

**89.** Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the Court considers reasonable.

*Illustration.*

B, living in Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable.

*Delivery.*

**90.** Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorized to hold them on his behalf.

Delivery how made.

*Illustrations.*

(a.) A sells to B a horse, and causes or permits it to be removed from A's stable to B's: The removal to B's stable is a delivery.

(b.) B in England orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton: The putting the cotton on board the ship is a delivery to B.

(c.) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown in order that he may get the goods: This is delivery.

(d.) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. A receives warehouse-rent for them from C: This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehousemen of C.

(e.) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B: This is a delivery.

(f.) A agrees to sell B five tons of oil, at 1,000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it to him on payment of the price of the oil. B refuses to pay: There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A.

**91.** A delivery to a wharfinger or carrier of the goods sold has

Effect of delivery to wharfinger or carrier.	the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.
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*Illustration.*

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B: There has not been a sufficient delivery to charge B in a suit for the price.

**92.** A delivery of part of goods, in progress of the delivery

Effect of part-delivery.	of the whole, has the same effect for the purpose of passing the property in such goods as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.
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*Illustrations.*

(a.) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole: This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b.) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood: This has not the legal effect of delivery of the whole.

(c.) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

**93.** In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery.\*  
Seller not bound to deliver until buyer applies for delivery.

**94.** In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale: and goods contracted to be sold are to be delivered at the place at which they are at the time of the contract for sale, or if not then in existence, at the place at which they are produced.  
Place of delivery.

*Seller's Lien.*

**95.** Unless a contrary intention appears by the contract, a seller has a lien† on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.‡  
Seller's lien.

**96.** Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But, if the buyer becomes insolvent before delivery of the goods, or, if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.  
Lien where payment to be made at a future day, but no time fixed for delivery.

\* See s. 46, *supra*.

† For the amount of the purchase-money.

‡ Or untendered.

**Explanation.**—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

‘Insolvency’ defined.

*Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent A may retain the goods for the price.

**97.** Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.

*Illustration.*

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them : A may retain the goods for the price.

**98.** A seller, in possession of goods sold, may retain them for the price against any subsequent buyer unless the seller has recognized the title of the subsequent buyer.

Seller's lien against subsequent buyer.

*Stoppage in Transit.*

**99.** A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer.

Power of seller to stop in transit.

**100.** Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

When goods are to be deemed in transit.

*Illustrations.*

(a.) B, living at Madras, orders goods of A at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there

delivered to C. a wharfinger, to be forwarded to Madras: The goods, while they are in the possession of C, are in transit.

(b.) B, at Delhi, orders goods of A at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment: The goods are in transit.

(c.) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in C's warehouse for B: The goods are no longer in transit.

(d.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton: The transit is at an end when the cotton is delivered on board the ship.

(e.) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for: A may stop the cotton.

**101.** The seller's right of stoppage does not, except in the Continuance of right of cases hereinafter mentioned, cease on stoppage. the buyer's re-selling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

**102.** The right of stoppage ceases if the buyer, having Cessation of right on as- obtained a bill of lading or other do- signment, by buyer, of bill cument showing title to the goods,\* of lading. assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

### *Illustrations.*

(a.) A sells and consigns certain goods to B, and sends him the bill of lading. A being still unpaid, B becomes insolvent, and, while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency: A cannot stop the goods in transit.

(b.) A sells and consigns certain goods to B, A being still unpaid. B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent: The assignment not being in good faith, A may still stop the goods in transit.

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\* See s. 108, *Excep. 1, infra.*

**103.** Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

*Illustrations.*

(a.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B becomes insolvent, being indebted to C to the amount of 9,000 rupees: A is not entitled to stop the goods except on payment or tender to C of 5,000 rupees.

(b.) A sells and consigns goods to B of the value of 12,000 rupees. B assigns the bill of lading for these goods to C to secure the sum of 5,000 rupees due from him to C upon a general balance of account. B becomes insolvent: A is entitled to stop the goods in transit without payment or tender to C of the 5,000 rupees.

**104.** The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are.

**105.** Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

**106.** Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

*Illustration.*

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit. B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit: A is entitled to hold the 40 bales until the price of the 100 bales is paid.

*Re-sale.*

**107.** Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for to perform.

them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, re-sell them after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such re-sale.

### *Title.*

**108.** No seller can give to the buyer of goods a better title than he has himself, except in the following cases:—

*Exception 1.*—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods, of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary:— Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

*Exception 2.*—If one of several joint owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

*Exception 3.*—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person, who, before the contract is rescinded, buys them in good faith of the person in possession, unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

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\* It has been held that this exception does not apply 'where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose.'—*Greenwood v. Holquette*, 12 B. L. R. 46.



*Illustrations.*

(a.) A buys from B, in good faith, a cow which B had stolen from C : The property in the cow is not transferred to A.

(b.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit : The property in the goods passes to D.

(c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C : The property is not transferred to B.

(d.) A, B, and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide* : The property in the cow is transferred to D.

(e.) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract : The property in the horse is transferred to C ; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C : The property is not transferred to C.

*Warranty.*

**109.** If the buyer or any person claiming under him is, by

Seller's responsibility for reason of the invalidity of the seller's  
badness of title. title, deprived of the thing sold, the seller  
is responsible to the buyer or the person claiming under him for  
loss caused thereby unless a contrary intention appears by the  
contract.

Establishment of implied  
warranty of goodness or  
quality.

**110.** An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness  
implied on sale of provisions.

**111.** On the sale of provisions, there is an implied warranty that they are sound.

Warranty of bulk implied  
on sale of goods by sample.\*

**112.** On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.\*

\* See s. 118, *infra*.

**113.** Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk.

*Explanation.*—But, if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

*Illustrations.*

(a) A, at Calcutta, sells to B twelve bags of "waste silk" then on its way from Murshidabad to Calcutta: There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk."

(b.) A buys, by sample, and after having inspected the bulk, 100 bales of "Fair Bengal" cotton. The cotton proves not to be such as is known in the market as "Fair Bengal:" There is a breach of warranty.

**114.** Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.\*

*Illustration.*

B orders of A, a copper-manufacturer, copper for sheathing a vessel. A, on this order, supplies copper: There is an implied warranty that the copper is fit for sheathing a vessel.

**115.** Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

*Illustration.*

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton cleaning machine to clean the cotton at my factory." A sends the machine according to order: There is an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.

\* See s. 118, *infra*.

**116.** In the absence of fraud, and of any express warranty of quality, the seller of an article which Seller when not responsible for latent defects. answers the description under which it was sold is not responsible for a latent defect in it.

*Illustration.*

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware: A is not responsible for this.

**117.** Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

*Illustration.*

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale: The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness.

**118.** Where there has been a contract with a warranty for the sale of goods which, at the time or Right of buyer on breach of warranty in respect of goods not ascertained. the contract, were not ascertained or not in existence, and the warrant is broken, the buyer may accept the goods, or refuse to accept the goods when tendered,

or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them: Provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

In any case, the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but, if he accepts the goods, and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

*Illustrations.*

(a.) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B: B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b.) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it

not equal to sample. B afterwards uses two sacks, and sells one: He cannot now rescind the contract and recover the price; but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c.) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair: He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair.

### *Miscellaneous.*

#### **119.** When the seller sends to the buyer goods not ordered

When buyer may refuse to accept if goods not ordered are sent with goods ordered.	with goods ordered, the buyer may refuse to accept any of the goods so sent if there is risk or trouble in separating the goods ordered from the goods not ordered.
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### *Illustration.*

A orders of B specific articles of china. B sends these articles to A in a hamper with other articles of china which had not been ordered: A may refuse to accept any of the goods sent.

#### **120.** If a buyer wrongfully refuses to accept the goods sold

Effect of wrongful refusal to accept.	to him, this amounts to a breach of the contract of sale.
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#### **121.** When goods sold have been delivered to the buyer, the

Right of seller as to rescission on failure of buyer to pay price at time fixed.	seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed unless it was stipulated by the contract that he should be so entitled.
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#### **122.** Where goods are sold by auction, there is a distinct

Sale and transfer of lots sold by auction.	and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.
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#### **123.** If, at a sale by auction, the seller makes use of pre-

Effect of use, by seller, of pretended biddings to raise price.	tended biddings to raise the price, the sale is voidable at the option of the buyer.
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## CHAPTER VIII.

## OF INDEMNITY AND GUARANTEE.

**124.** A contract by which one party promises to save the "Contract of indemnity" other from loss caused to him by the defined. conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

*Illustration.*

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees: This is a contract of indemnity.

**125.** The promisee in a contract of indemnity, acting within Right of indemnity-holder the scope of his authority, is entitled to when sued. recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

**126.** A "contract of guarantee" is a contract to perform the "Contract of guarantee," promise, or discharge the liability, of a "surety," "principal debtor," and "creditor." third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor"; and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

**127.** Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

*Illustrations.*

(a.) B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods: This is a sufficient consideration for C's promise.

(b.) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested: This is a sufficient consideration for C's promise.

(c.) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B: The agreement is void.

**128.** The liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract.

Surety's liability.

*Illustration.*

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

**129.** A guarantee which extends to a series of transactions is called a "continuing guarantee."

*Illustrations.*

(a.) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents: This is a continuing guarantee.

(b.) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may, from time to time, supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay: The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(c.) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C, and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for: The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

**130.** A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Revocation of continuing guarantee.

*Illustrations.*

(a.) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee: This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees on default of C.

(b.) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity: A is liable upon his guarantee.

**131.** The death of the surety operates, in the absence of any Revocation of continuing contract to the contrary, as a revocation guarantee by surety's death. of a continuing guarantee, so far as regards future transactions.

**132.** Where two persons contract with a third person to undertake a certain liability, and also Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default. contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

*Illustration.*

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made: The fact, that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

**133.** Any variance made without the surety's consent in the Discharge of surety by terms of the contract between the principal and the creditor discharges the surety as to transactions subsequent to the variance.

*Illustrations.*

(a.) A becomes surety to C for B's conduct as a manager in C's Bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdraft. B allows a customer to overdraw, and the Bank loses a sum of money: A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b.) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself: A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c.) C agrees to appoint B as his clerk to sell goods at a yearly salary upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him, and not by a fixed salary: A is not liable for subsequent misconduct of B.

(d.) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C: A is not liable on his guarantee for any goods supplied after this new arrangement.

(e.) C contracts to lend B 5,000 rupees on the first March. A guarantees repayment. C pays the 5,000 rupees to B on the first January: A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the first of March.

### 134. The surety is discharged by any contract between the

Discharge of surety by creditor and the principal debtor, by release or discharge of principal debtor. which the principal debtor is released; or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.\*

#### *Illustrations.*

(a.) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed, and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands: Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b.) A contracts with B to grow a crop of indigo on A's land, and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo: C is no longer liable on his guarantee.

(c.) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's

\* See ss. 39, 53, 54, 55, 62, 63, 67, 118, and 120, *supra*.



performance of the contract. B omits to supply the timber: C is discharged from his suretyship.

**135.** A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or agrees not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

**136.** Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

*Illustration.*

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B: A is not discharged.

**137.** Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

*Illustration.*

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable: A is not discharged from his suretyship.

**138.** Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.\*

Release of one co-surety does not discharge others.

**139.** If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

\* See s. 44, *supra*.

*Illustrations.*

(a.) B contracts to build a ship for C for a given sum to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments: A is discharged by the prepayment.\*

(b.) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A, as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized: A is discharged from liability on the note.

(c.) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles: A is not liable to B on his guarantee.

**140.** Where a guaranteed debt has become due, or default

Rights of surety on payment or performance. of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.†

**141.** A surety is entitled to the benefit of every security which

Surety's right to benefit of the creditor has against the principal creditor's securities. debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

*Illustrations.*

(a.) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee: A is discharged from liability to the amount of the value of the furniture.

(b.) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution: A is discharged.

\* See s. 133, *supra*.

† For example, the right to stop in transit.

‡ See s. 139, *supra*.

(c.) A, as surety for B, makes a bond jointly with B, to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security: A is not discharged.

**142.** Any guarantee which has been obtained by means of Guarantee obtained by misrepresentation made by the creditor, misrepresentation invalid. or with his knowledge and assent, concerning a material part of the transaction, is invalid.

**143.** Any guarantee which the creditor has obtained by Guarantee obtained by means of keeping silence as to a concealment invalid. material circumstance is invalid.

#### *Illustrations.*

(a.) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A, in consequence, calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default: The guarantee is invalid.

(b.) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market-price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A: A is not liable as a surety.

**144.** Where a person gives guarantee upon a contract that Guarantee on contract that the creditor shall not act upon it until creditor shall not act on it another person has joined in it as co-surety, the guarantee is not valid if that until co-surety joins. other person does not join.\*

**145.** In every contract of guarantee, there is an implied Implied promise to indemnify surety. promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

#### *Illustrations.*

(a.) B is indebted to C, and A is surety for the debt. C demands payment from A, and, on his refusal, sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs: He can recover from B the amount paid by him for costs as well as the principal debt.

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\* See s. 33, *supra*.

(b.) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c.) A guarantees to C to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied: A cannot recover from B more than the price of the rice actually supplied.

**146.** Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt or of that part of it which remains unpaid by the principal debtor.\*

#### *Illustrations.*

(a) A, B, and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment: A, B, and C are liable, as between themselves, to pay 1,000 rupees each.

(b.) A, B, and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B, and C that A is to be responsible to the extent of one quarter, B to the extent of one quarter, and C to the extent of one half. E makes default in payment: As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

**147.** Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.\*

#### *Illustrations.*

(a.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees: A, B, and C are each liable to pay 10,000 rupees.

(b.) A, B, and C, as sureties for D, enter into three several bonds each in a different penalty, namely A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees: A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

\* See s. 43, *supra*.

(c.) A, B, and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees: A, B, and C have to pay each the full penalty of his bond.

## CHAPTER IX.

### OF BAILMENT.

**148.** A "bailment" is the delivery of goods by one person 'Bailment,' 'bailor,' and to another for some purpose upon a 'bailee,' defined. contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering the goods is called the "bailor." The person to whom they are delivered is called the "bailee."

*Explanation.*—If a person, already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods, although they may not have been delivered by way of bailment.

**149.** The delivery to the bailee may be made by doing any Delivery to bailee how thing which has the effect of putting made. the goods in the possession of the intended bailee, or of any person authorized to hold them on his behalf.

**150.** The bailor is bound to disclose to the bailee faults in 'Bailor's duty to disclose the goods bailed, of which the bailor is faults in goods bailed. aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

#### *Illustrations.*

(a.) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured: A is responsible to B for damage sustained.

(b.) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured: B is responsible to A for the injury.

**151.** In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.\*

**152.** The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing bailed if he has taken the amount of care of it described in section 151.

**153.** A contract of bailment is voidable at the option of the bailor if the bailee does any act with regard to the goods bailed inconsistent with the condition of the bailment.

*Illustration.*

A lets to B for hire a horse for his own riding. B drives the horse in his carriage: This is, at the option of A, a termination of the bailment.

**154.** If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

*Illustrations.*

(a.) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls, and is injured: B is liable to make compensation to A for the injury done to the horse.

(b.) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls, and is injured: A is liable to make compensation to B for the injury to the horse.

**155.** If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

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\* As to railway contracts, see the Indian Railways Act, 1890 (IX. of 1890), s. 72. - Cf. also, as to liability of common carriers, s. 8 of the Carriers Act (III. of 1865).

**156.** If the bailee, without the consent of the bailor, mixes

Effect of mixture without the goods of the bailor with his own  
bailor's consent when the goods, and the goods can be separated  
goods can be separated. or divided, the property in the goods  
remains in the parties respectively; but the bailee is bound to bear  
the expense of separation or division, and any damage arising from  
the mixture.

*Illustration.*

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales and any other incidental damage.

**157.** If the bailee, without the consent of the bailor, mixes

Effect of mixture without the goods of the bailor with his own  
bailor's consent when the goods in such a manner that it is im-  
goods cannot be separated. possible to separate the goods bailed  
from the other goods, and deliver them back, the bailor is entitled  
to be compensated by the bailee for the loss of the goods.

*Illustration.*

A bails a barrel of Cape-flour, worth Rs. 45, to B. B, without A's consent, mixes the flour with country flour of his own worth only Rs. 25 a barrel: B must compensate A for the loss of his flour.

**158.** Where, by the conditions of the bailment, the goods

Repayment by bailor of are to be kept or to be carried, or to have  
necessary expenses. work done upon them, by the bailee for  
the bailor, and the bailee is to receive no remuneration, the bailor  
shall repay to the bailee the necessary expenses incurred by him for  
the purpose of the bailment.

**159.** The lender of a thing for use may at any time require

Restoration of goods lent its return if the loan was gratuitous, even  
gratuitously. though he lent it for a specified time or  
purpose. But, if, on the faith of such loan made for a specified  
time or purpose, the borrower has acted in such a manner that the  
return of the thing lent before the time agreed upon would cause  
him loss exceeding the benefit actually derived by him from the  
loan, the lender must, if he compels the return, indemnify the bor-  
rower for the amount in which the loss so occasioned exceeds the  
benefit so derived.\*

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\* See Story, *Bailments*, § 258.

**160.** It is the duty of the bailee to return or deliver, according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.\*

**161.** If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.†

Return of goods bailed on expiration of time or accomplishment of purpose.

Bailee's responsibility when goods are not duly returned.

**162.** A gratuitous bailment is terminated by the death, either of the bailor, or of the bailee.

**163.** In the absence of any contract to the contrary, the bailor is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

#### *Illustration.*

A leaves a cow in the custody of B to be taken care of. The cow has a calf: B is bound to deliver the calf as well as the cow to A.

**164.** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

**165.** If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all in the absence of any agreement to the contrary.

**166.** If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.‡

\* But see ss. 24, 152, *supra*, and 170, *infra*, to the provisions of which this section must be subject.

† As to railway contracts, see the Indian Railways Act (IX. of 1890), s. 72.

‡ See the Indian Evidence Act (I. of 1872), s. 117.



**167.** If a person other than the bailor claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

**168.** The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods, and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.\*

Right of finder of goods:

may sue for specific reward offered.

**169.** When a thing, which is commonly the subject of sale, is lost, if the owner cannot, with reasonable diligence, be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value; or

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.†

**170.** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

#### *Illustrations.*

(a.) A delivers a rough diamond to B, a jeweller, to be cut and polished which is accordingly done: B is entitled to retain the stone till he is paid for the services he has rendered.

(b.) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give A three months' credit for the price: B is not entitled to retain the coat until he is paid.

**171.** Bankers, factors, wharfingers, attorneys of a High Court, and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of ac-

General lien of bankers, factors, wharfingers, attorneys, and policy-brokers.

\* See Story, *Bailments*, § 121a.

† New York Civil Code, § 943.

count, any goods\* bailed to them;† but no other persons have a right to retain, as a security for such balance, goods bailed to them unless there is an express contract to that effect.‡

### *Bailments of Pledges.*

**172.** The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

**173.** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession, or for the preservation, of the goods pledge.

**174.** The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged, but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

**175.** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

**176.** If the pawnor makes default in payment of the debt or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit § against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

\* Whether belonging to the bailor or not.

† As such.

‡ As to the lien of an agent, see s. 221, *infra*. As to the lien of Railway Administrations, see the Indian Railways Act (IX. of 1890), s. 55.

§ Within three years from the making of the loan or the breach of the promise.—See the Indian Limitation Act (IX. of 1908), Sch. I., Nos. 57 and 115.

If the proceeds of such sale are less than the amount due in respect of the debtor promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

**177.** If a time is stipulated for the payment of the debt or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them;\* but he must, in that case, pay, in addition, any expenses which have arisen from his default.

**178.** A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-pledge by possessor of goods or of documentary title to goods. keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.†

**179.** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

### *Suits by Bailees or Bailors against Wrong-doers .*

**180.** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

\* For limitation, see the Indian Limitation Act (IX. of 1908), Sch. I., No. 145.

† Cf. the Factors Act (5 & 6 Vict., c. 39), ss. 1 and 3.

**181.** Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

## CHAPTER X.

### AGENCY.

#### *Appointment and Authority of Agents.*

**182.** An "agent" is a person employed to do any act for another,\* or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

**183.** Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.†

**184.** As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to his principal according to the provisions in that behalf herein contained.

**185.** No consideration is necessary to create an agency.

**186.** The authority of an agent may be expressed or implied.‡

**187.** An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

\* Cf. s. 225, *infra*. As to the effect of an agent's fraud, see s. 17 *supra*, and s. 238, *infra*.

† Cf. s. 11, *supra*.

‡ But see the Indian Registration Act (XVI. of 1908), s. 33, and the Code of Civil Procedure (Act V. of 1908), O. III., r. 4.

*Illustration.*

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge; B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

**188.** An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

Extent of agent's authority.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

*Illustrations.*

(a.) A is employed by B, residing in London, to recover at Bombay a debt due to B: A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b.) A constitutes B his agent to carry on his business of a ship-builder: B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

**189.** An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.\*

Agent's authority in an emergency.

*Illustrations.*

(a.) An agent for sale may have goods repaired if it be necessary.

(b.) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack; B may sell the provisions at Calcutta if they will not bear the journey to Cuttack without spoiling.

*Sub-Agents.*

**190.** An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless, by the ordinary custom of trade, a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

When agent cannot delegate.

\* But see s. 214, *infra*.

**191.** A "sub-agent" is a person employed by, and acting under the control of, the original agent in the absence of the agent.  
 "Sub-agent" defined.

**192.** Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by, and responsible for, his acts, as if he were an agent originally appointed by the principal.  
 Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.  
 Agent's responsibility for sub-agent.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.  
 Sub-agent's responsibility.

**193.** Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts, both to the principal and to third persons; the principal is not represented by, or responsible for, the acts of the persons so employed,\* nor is that person responsible to the principal.  
 Agent's responsibility for sub-agent appointed without authority.

**194.** Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.  
 Relation between principal and person duly appointed by agent to act in business of agency.

#### *Illustrations.*

(a.) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale: C is not a sub-agent, but is A's agent for the conduct of the sale.

(b.) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money: D is not a sub-agent, but is solicitor for A.

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\* Unless, of course, he ratifies them.—See s. 196, *infra*.

**195.** In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

*Illustrations.*

(a.) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently, and the ship turns out to be unseaworthy, and is lost: B is not, but the surveyor is, responsible to A.

(b.) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds: B is not responsible to A for the proceeds.

*Ratification.*

**196.** Where acts\* are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such act. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority.

Effect of ratification.

**197.** Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

*Illustrations.*

(a.) A, without authority, buys goods for B. Afterwards B sells them to C on his own account: B's conduct implies a ratification of the purchase made for him by A.

(b.) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C: B's conduct implies a ratification of the loan.

**198.** No valid ratification can be made by a person whose knowledge requisite to knowledge of the facts of the case is materially defective.

Knowledge requisite to valid ratification.

Effect of ratifying unauthorized act forming part of a transaction.

**199.** A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

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\* That is, lawful acts.

**200.** An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

*Illustrations.*

(a.) A, not being authorized thereto by B, demands, on behalf of B the delivery of a chattel, the property of B, from C, who is in possession of it: This demand cannot be ratified by B so as to make C liable for damages for his refusal to deliver.

(b.) A holds a lease from B, terminable on three months' notice. C, an unauthorized person, gives notice of termination to A: The notice cannot be ratified by B so as to be binding on A.

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*Revocation of Authority.*

**201.** An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind, or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.\*

**202.** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

*Illustrations.*

(a.) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A: A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b.) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances: A cannot revoke this authority, nor is it terminated by his insanity or death.

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\* As to the law in force in presidency-towns, see the Indian Insolvency Act (11 & 12 Vict., c. 21). As to the rest of British India, see the Code of Civil Procedure (Act XIV. of 1882), Ch. XX.



**203.** The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

**204.** The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

#### *Illustrations.*

(a.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price: A cannot revoke B's authority so far as regards payment for the cotton.

(b.) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price: A can revoke B's authority to pay for the cotton.

**205.** Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation\* to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal or renunciation by agent.

**206.** Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

**207.** Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent, respectively.

Revocation and renunciation may be expressed or implied.

#### *Illustration.*

A empowers B to let A's house. Afterwards A lets it himself: This is an implied revocation of B's authority.

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\* See s. 73, *supra*.

**208.** The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

*Illustrations.*

(a.) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees: The sale is binding on A, and B is entitled to five rupees as his commission.

(b.) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds: C's payment is good as against A.

(c.) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C: The payment is good as against D, the executor.

**209.** When an agency is terminated by the principal dying or becoming of unsound mind, the Agent's duty on termination of agency by principal's death or insanity. agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

**210.** The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

*Agent's Duty to Principal.*

**211.** An agent is bound to conduct the business of his principal according to the directions given by the principal,\* or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be

Agent's duty in conducting principal's business.

\* But see s. 189, *supra*.

sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

### *Illustrations.*

(a.) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investments: A must make good to B the interest usually obtained by such investments.

(b.) B, a broker in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent: B must make good the loss to A.

## **212.** An agent is bound to conduct the business of the

Skill and diligence required from agent. agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

### *Illustrations.*

(a.) A, a merchant in Calcutta, has an agent, B in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent: B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, *e. g.*, by variation of rate of exchange—but not further.

(b.) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent: A must make compensation to his principal in respect of any loss thereby sustained.

(c.) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the under-writers: A is bound to make good the loss to B.

(d.) A, a merchant in England, directs B, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival, the price of cotton rises: B is

bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

**213.** An agent is bound to render proper accounts to his principal on demand.

**214.** It is the duty of an agent, in case of difficulty, to use all reasonable diligence in communicating with his principal, and seeking to obtain his instructions.\*

Agent's duty to communicate with principal.

**215.** If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Right of principal when agent deals on his own account in business of agency without principal's consent.

#### *Illustrations.*

(a.) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b.) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine: A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**216.** If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

#### *Illustration.*

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself: A may, on discovering

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\* See s. 189, *supra*.

that B has bought the house, compel him to sell it to A at the price he gave for it.

**217.** An agent may retain,\* out of the sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

**218.** Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

**219.** In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

**220.** An agent, who is guilty of misconduct in the business of the agency,† is not entitled to any remuneration in respect of that part of the business which he has misconducted.

#### *Illustrations.*

(a.) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees: B is entitled to remuneration for recovering the 1,00,000 rupees, and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b.) A employs B to recover 1,000 rupees from C. Through B's misconduct, the money is not received: B is entitled to no remuneration for his services, and must make good the loss.

**221.** In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether moveable or

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\* See s. 221, *infra*. † See ss. 195, 211 to 214, and 218, *supra*.

immoveable, of the principal, received by him until the amount due to himself for the commission, disbursements, and services in respect of the same, has been paid or accounted for to him.\*

### *Principal's Duty to Agent.*

**222.** The employer of an agent is bound to indemnify him Agent to be indemnified against consequences of lawful acts. against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

#### *Illustrations.*

(a.) B, at Singapore, under instructions from A, of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues for breach of contract. B informs A of the suit, and A authorized him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses: A is liable to B for such damages, costs, and expenses.

(b.) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil and C sues B.† B informs A, who repudiates the contract altogether. B defends but unsuccessfully, and has to pay damages and costs, and incurs expenses: A is liable to B for such damages, costs and expenses.

**223.** Where one person employs another to do an act, and Agent to be indemnified against consequences of acts done in good faith. the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act though it causes an injury to the rights of third persons.

#### *Illustrations.*

(a.) A, a decree-holder, and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods: A is liable to indemnify the officer for the sum which he is compelled to pay to C in consequence of obeying A's directions.

(b.) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B, and recovers the value of the goods and costs: A is liable to indemnify B for what he has been compelled to pay to C, and for B's own expenses.

\* As to the general lien of an agent who is a banker, factor, attorney, or policy-broker, see s. 171, *supra*.

† It must be assumed that the disclosed principal could not be sued.—See s. 230, *infra*.

**224.** Where one person employs another to do an act which

Non-liability of employer of agent to do a criminal act. is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.\*

*Illustrations.*

(a.) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing: A is not liable to indemnify B for those damages.

(b.) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C, and has to pay damages, and also incurs expenses: A is not liable to B upon the indemnity.

**225.** The principal must make compensation to his agent

Compensation to agent for injury caused by principal's neglect. in respect of injury† caused to such agent by the principal's neglect or want of skill.

*Illustration.*

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt: A must make compensation to B.

*Effect of Agency on Contracts with Third Persons.***226.** Contracts entered into through an agent, and obligations

Enforcement and consequences of agent's contracts. arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into, and the acts done, by the principal in person.

*Illustrations.*

(a.) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set off against that claim a debt due to himself from B.

(b.) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B: C is discharged of his obligation to pay the sum in question to B.

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\* See s. 24, *supra*. † Cf. the Indian Fatal Accidents Act (XIII. of 1855.)

**227.** When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

*Illustration.*

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo: A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

**228.** Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

*Illustration.*

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees: A may repudiate the whole transaction.

**229.** Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to, or obtained by, the principal.

*Illustrations.*

(a.) A is employed by B to buy from C certain goods of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact: B is not entitled to set off a debt owing to him from C against the price of the goods.

(b.) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

**230.** In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.



Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases:—

- (1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad :
- (2.) Where the agent does not disclose the name of his principal :
- (3.) Where the principal, though disclosed, cannot be sued.

**231.** If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract : but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

*Illustration.*

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge, nor reasonable ground of suspicion, that such is the case : C cannot compel B to take the rice without allowing him to set off A's debt.

**232.** Where one man makes a contract with another, neither knowing, nor having reasonable ground to suspect, that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

**233.** In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

*Illustration.*

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C : A may sue either B or C, or both, for the price of the cotton.

**234.** When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal, respectively.

**235.** A person untruly\* representing himself to be the agent of another, and there- by inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

**236.** A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

**237.** When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has, by his words or conduct, induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

#### *Illustrations.*

(a.) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price : A is bound by the contract.

(b.) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A : The sale is good.

**238.** Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principal;† but misrepresentations

\* See s. 208, *supra*.

† See s. 250, *infra*.

made, or frauds committed, by agents in matters which do not fall within their authority, do not affect their principals.

### *Illustrations.*

(a.) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation which he was not authorized by B to make: The contract is voidable as between B and C at the option of C.

(b.) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein: The bills of lading are void as between B and the pretended consignor.

## CHAPTER XI.

### OF PARTNERSHIP.

**239.** "Partnership" is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.\*

"Firm" defined.

Persons who have entered into partnership with one another are called collectively a "firm."

### *Illustrations.*

(a.) A and B buy 100 bales of cotton, which they agree to sell for their joint account: A and B are partners in respect of such cotton.

(b.) A and B buy 100 bales of cotton, agreeing to share it between them: A and B are not partners.

(c.) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss: A and B are partners.

(d.) A and B agree to work together as carpenters, but that A shall receive all profits, and shall pay wages to B: A and B are not partners.

(e.) A and B are joint owners of a ship: This circumstance does not make them partners.

**240.** A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying

Lender not a partner by advancing money for share of profits.

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\* This would apply to members of Joint-stock Companies; but the law applicable to them is saved by s. 266, *infra*.

with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.\*

**241.** In the absence of any contract to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business is to be considered a loan within the meaning of the last-preceding section.

Property left in business by retiring partner or deceased partner's representative.

**242.** No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Servant or agent remunerated by share of profits not a partner.

**243.** No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Widow or child of deceased partner receiving annuity out of profits not a partner.

**244.** No person receiving, by way of annuity or otherwise, a portion of the profits of any business in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.†

Person receiving portion of profits for sale of good-will not a partner.

**245.** A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

**246.** Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who, on the faith thereof, give credit to the partnership.‡

Liability of person permitting himself to be represented as a partner.

\* See *Mollwo March & Co. v. Court of Wards*, 10 B. L. R. 312.

† Cf. the Partnership Act, 1865, (Stat. 28 & 29 Vict., c. 86), s. 4.

‡ See the Indian Evidence Act (l. of 1872), s. 109.

**247.** A person who is under the age of majority according

Minor partner not personally liable, but his share is. to the law\* to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

**248.** A person who has been admitted to the benefits of

Liability of minor partner partnership under the age of majority\* on attaining majority. becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

**249.** Every partner is liable for all debts and obligations

Partner's liability for debts incurred while he is a partner in the of partnership. usual course of business by, or on behalf of, the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner.

**250.** Every partner is liable to make compensation to third

Partner's liability to third persons in respect of loss or damage person for neglect or fraud of arising from the neglect or fraud of any co-partner. partner in the management of the business of the firm.

**251.** Each partner, who does any act necessary for, or usu-

Partner's power to bind ally done in, carrying on the business of co-partners. such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

*Exception.*—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

#### *Illustrations.*

(a.) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction: The firm

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\* See the Indian Majority Act (IX. of 1875).

is liable on the bill provided the holder did not know of the circumstances under which the bill was drawn.

(b.) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority: The other partners are not liable on the bill.

(c.) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and afterwards A appropriates the money to his own use: The partnership is liable to make good the money.

(d.) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership-business, and converts them to his own separate use, there being no collusion between him and the seller: The firm is liable for the price of the goods.

## 252. Where partners have by contract regulated and defined,

Annulment of contract de- as between themselves, their rights and  
fining partners' rights and obligations, such contract can be annul-  
obligations. led or altered only by consent of all\*  
of them, which consent must either be expressed or be implied  
from a uniform course of dealing.

### *Illustration.*

A, B, and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership-business shall be equally divided between them. Afterwards they carry on the partnership-business for many years. A receiving one-half of the net profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this arrangement: This course of dealing supersedes the provision in the articles as to the division of profits.

Rules determining part-  
ners' mutual relations where  
no contract to contrary.

253. In the absence of any con-  
tract to the contrary, the relations of  
partners to each other are determined  
by the following rules:—

- (1.) All partners are joint owners of all property originally brought into the partnership-stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership-business. All such property is called partnership-property. The share of each partner in the partnership-property is the value of his original contribution increased or diminished by his share of profit or loss:

\* See s. 253, cl. (5), *infra*.

- (2.) All partners are entitled to share equally in the profits of the partnership-business, and must contribute equally towards the losses sustained by the partnership :
- (3.) Each partner has a right to take part in the management of the partnership-business :
- (4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business :
- (5.) When differences arise as to ordinary matters connected with the partnership-business, the decision, shall be according to the opinion of the majority of the partners ; but no change in the nature of the business of the partnership can be made except with the consent of all the partners :\*
- (6.) No person can introduce a new partner into a firm without the consent of all the partners :
- (7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members :
- (8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time :
- (9.) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever except by order of Court :
- (10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

254. At the suit of a partner, the Court may dissolve the partnership in the following cases :—

- (1.) When a partner becomes of unsound mind :
- (2.) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors :
- (3.) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person :

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\* See s. 252, *supra*.

(4.) When any partner becomes incapable of performing his part of the partnership-contract :

(5.) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership, or towards his partners :

(6.) When the business of the partnership can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

**255.** A partnership is in all cases dissolved by its business being prohibited by law.

**256.** If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

**257.** Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

General duties of partners.

**258.** A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

#### *Illustrations.*

(a.) A, B, and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on : A and B are entitled to participate, if they please, in the benefit of the lease.

(b.) A, B, and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments in consideration of C's using his influence to obtain the consignment for him : C is liable to account to the firm for the money so received by him.

**259.** If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all



**SCHEDULE :**  
**ENACTMENTS REPEALED.**

*Statutes.*

No. and year of (Statute.	TITLE.	Extent of repeal.
Stat. 29 Car. II., cap. 3.*	An Act for Prevention of Frauds and Perjuries.	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vict., cap. 21.†	To consolidate and amend the Law relating to Insolvent Debtors in India.	Section 42.

*Acts.*

No. and year of Act.	TITLE.	Extent of repeal.
Act XIII. of 1840 ...	An Act for the amendment of the Law regarding Fac- tors, by extending to the Territories of the East India Company, in cases governed by English Law, the provi- sions of the Stat. 4 Geo. IV., Chap. 83, as altered and amended by the Stat. 6 Geo. IV., Chap. 94.	The whole.
Act XIV. of 1840 ...	An Act for rendering a Writ- ten Memorandum necessary to the Validity of certain Promises and Engagements, by extending to the Territo- ries of the East India Com- pany, in cases governed by English Law, the provisions of the Stat. 9 Geo. IV., Chap. 14.	The whole..

\* Short title: "The Statute of Frauds"—See the Short Titles Act, 1896 (Stat. 59 & 60 Vict., c. 14).

† The Indian Insolvency Act, 1848.

SCHEDULE.—(*continued*.)ENACTMENTS REPEALED (*continued*).*Acts (contd.).*

No. and year of Act.	TITLE.	Extent of repeal.
Act XX. of 1844 ...	An Act to amend the Law relating to Advances <i>bona fide</i> made to Agents entrusted with Goods, by extending to the Territories of the East India Company, in cases governed by English Law, the provisions of the Stat. 5 & 6 Vict., c. 39, as altered by this Act.	The whole.
Act XXI. of 1848 ...	An Act for avoiding Wagers ...	The whole.
Act V. of 1866*	An Act to provide a Summary Procedure on Bills of Exchange, and to amend in certain respects the Commercial Law of British India.	Sections 9 & 10.
Act XV. of 1866 ...	An Act to amend the Law of Partnership in India.	The whole.
Act VIII. of 1867 ...	An Act to amend the Law relating to Horse-racing in India.	The whole.

\* Short title: "The Policies of Insurance (Marine and Fire) Assignment Act, 1866."—See the Indian Short Titles Act (XIV. of 1897).

THE UNIVERSITY OF CHICAGO

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ACT NO. II, OF 1912.  
The Co-operative Societies Act, 1912.

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# ACT NO. II. OF 1912.

## The Co-operative Societies Act, 1912.

PASSED BY THE GOVERNOR GENERAL IN COUNCIL.

*Received the assent of the Governor General on the 1st March 1912.*

### *An Act to amend the Law relating to Co-operative Societies.*

WHEREAS it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means, and for that purpose to amend the law relating to Co-operative Societies; It is hereby enacted as follows :—

#### *Preliminary.*

Short title and extent.                      1. (1) This Act may be called the Co-operative Societies Act, 1912; and

(2) It extends to the whole of British India.

Definitions.                                      2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “by-laws” means the registered by-laws for the time being in force and includes a registered amendment of the by-laws :

(b) “committee” means the governing body of a registered society to whom the management of its affairs is entrusted :

(c) “member” includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules :

(d) “officer” includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules or the by-laws to give directions in regard to the business of the society :

(e) “registered society” means a society registered or deemed to be registered under this Act :

(f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act : and

(g) "rules" means rules made under this Act.

### *Registration.*

3. The Local Government may appoint a person to be Registrar of Co-operative Societies for the Province of any portion of it, and may appoint persons to assist such Registrar, and may, by general or special order, confer on any such persons all or any of the powers of a Registrar under this Act.

4. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability :

Provided that unless the Local Government by general or special order otherwise directs—

(1) the liability of a society of which a member is a registered society shall be limited ;

(2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

Restrictions on interest of member of society with limited liability and a share capital.

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules ; or

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of

Conditions of registration.

at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages; or,

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word “limited” shall be the last word in the name of every society with limited liability registered under this Act.

**7.** When any question arises whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Application for registration.

**8. (1)** For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1); and

(b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and, where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

**9.** If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not

Registration.



contrary to the Act or to the rules, he may, if he thinks fit, register the society and its by-laws.

**10.** A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

Evidence of registration.

**11. (1)** No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

Amendment of the by-laws of registered society.

**(2)** If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may, if he thinks fit, register the amendment.

**(3)** When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

### *Rights and liabilities of members.*

**12.** No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

Member not to exercise rights till due payment made.

**13. (1)** Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society.

Votes of members.

**(2)** Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

**(3)** A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members.

**14. (1)** The transfer or charge of the share or interest of a member in the capital of a registered society, shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

(a) he has held such share or interest for not less than one year; and

(b) the transfer or charge is made to the society or to a member of the society.

### *Duties of registered societies.*

**15.** Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

**16.** Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws open to inspection free of charge at all reasonable times at the registered address of the society.

**17. (1)** The Registrar shall audit or cause to be audited by some person authorized by him by general or special order in writing in this behalf the accounts of every registered society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the society.

(3) The Registrar, the Collector or any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

*Privileges of registered societies.*

**18.** The registration of a society shall render it a body

Societies to be bodies corporate. corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

**19.** Subject to any prior claim of the Government in respect

Prior claim of society. of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

(a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan ;

(b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.

**20.** A registered society shall have a charge upon the share

Charge and set-off in respect of shares or interest of member. or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

**21.** Subject to the Provisions of section 20, the share or

Shares or interest not liable to attachment. interest of a member in the capital of a registered society shall not be liable to

attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act,\* 1909, nor a Receiver under the Provincial Insolvency Act,† 1907, shall be entitled to or have any claim on such share or interest.

**22. (1)** On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws:

Provided that—

(i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;

(ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

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\* Act III. of 1909. † Act III. of 1907.

**23.** The liability of a past member for the debts of a registered society as they existed at the time when he ceased to be a member shall continue for a period of two years from the date of his ceasing to be a member.

**24.** The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of a registered society as so they existed at the time of his decease.

**25.** Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein :—

(a) the date at which the name of any person was entered in such register or list as a member ;

(b) the date at which any such person ceased to be a member.

**26.** A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Exemption from compulsory registration of instruments relating to shares and debentures of registered society.

**27.** Nothing in section 17, sub-section (1), clauses (b) and (c), of the Indian Registration Act\* 1908, shall apply to—

(1) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or in part of immoveable property ; or

(2) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby

\* Act XVI. of 1908.

the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for benefit of the holders of such debenture ; or

- (3) any endorsement upon or transfer of any debenture issued by any such society.

Power to exempt from income-tax, stamp-duty and registration-fees. **28.** The Governor-General in Council, by notification in the Gazette of India, may, in the case of any registered society or class of registered society, remit—

- (a) the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits ;
- (b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable ;
- (c) any fee payable under the law of registration for the time being in force.

*Property and funds of registered societies.*

Restrictions on loans. **29.** (1) A registered society shall not make a loan to any person other than a member :

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property.

(3) The Local Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immoveable property by any registered society or class of registered societies.

**30.** A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.

Restrictions on borrowing.

**31.** Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules, prescribe.

*Investment of funds.*

**32.** (1) A registered society may invest or deposit its funds—

- (a) in the Government Savings Bank, or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act 1882,\* or
- (c) in the shares or on the security of any other registered society, or
- (d) with any Bank or person carrying on the business of banking, approved for this purpose by the Registrar, or
- (e) in any other mode permitted by the rules.

(2) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

*Funds not to be divided by way of profit.*

**33.** No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members :

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

**34.** Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act† 1890.

\* Act II. of 1882.

† Act I. of 1890.

*Inspection of affairs.*

**35.** (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) All officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar or the person authorized by the Registrar may require.

**36.** (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society:

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

**37.** Where an inquiry is held under section 35, or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

**38.** Any sum awarded by way of costs under section 37 may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person.



*Dissolution of society.*

**39.** (1) If the Registrar, after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

(2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(5) The authority to which appeals under this section shall lie shall be the Local Government :

Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

**40.** Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

**41.** Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(a) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect ;

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

**42.** (1) Where the registration of a society is cancelled under section 39 or section 40, the Registrar may appoint a competent person to be liquidator of the society.

Winding-up.

(2) A liquidator appointed under sub-section (1) shall have power—

- (a) to institute and defend suits and other legal proceedings on behalf of the society by his name of office ;
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;
- (c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and
- (e) to give such directions in regard to the collection and distribution of the assets of the society, as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure,\* 1908.

(4) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge.

(5) Orders made under this section shall, on application, be enforced as follows:—

- (a) When made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court ;
- (b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

*Rules.*

**43.** (1) The Local Government may, for the whole or any part of the Province and for any registered society or class of such societies, make rules to carry out the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) subject to the provisions of section 5, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;
- (c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation ;
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership ;
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ;
- (g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers ;
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit,

and for the periodical publication of a balance-sheet showing the assets and liabilities of a society ;

- (i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ;
- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified ;
- (k) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;
- (l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators ;
- (m) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members ;
- (n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;
- (o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member ;
- (p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;

- (g) prescribe the extent to which a society may limit the number of its members;
  - (r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies;
  - (s) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals; and
  - (t) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.
- (3) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.
- (4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.
- (5) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act.

#### *Miscellaneous.*

**44.** (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land-revenue.

(2) Sums due from a registered society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability; and, thirdly, in the case of other societies, from the members.

**45.** Notwithstanding anything contained in this Act, the Local Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt

Power to exempt societies from conditions as to registration.

any society from any of the requirements of this Act as to registration.

**46.** The Local Government may, by general or special order,

Power to exempt registered societies from provisions of the Act. exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

**47. (1)** No person other than a registered society shall trade

Prohibition of the use of the word "co-operative". or carry on business under any name or title of which the word "co-operative" is part without the sanction of the Local Government:

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

Indian Companies Act, 1882, not to apply.

**48.** The provisions of the Indian Companies Act,\* 1882, shall not apply to registered societies.

**49.** Every society now existing which has been registered

Saving of existing societies. under the Co-operative Credit Societies Act,† 1904, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

Repeal.

**50.** The Co-operative Credit Societies Act,† 1904, is hereby repealed.

\* Act VI. of 1882.

† Act X. of 1904.



# ACT XX. OF 1847.

## The Indian Copyright Act, 1847.

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# ACT XX. OF 1847.

## The Indian Copyright Act, 1847.\*

PASSED ON THE 18th DECEMBER 1847.

*An Act for the Encouragement of Learning in the Territories subject to the Government of the East India Company, by defining and providing for the Enforcement of the Right called Copyright therein.*

WHEREAS doubts may exist whether the right called copyright can be enforced by the common law of England in those parts of the territories subject to the government of the East India Company into which the common law of England has been introduced ;

And whereas doubts may exist whether the said right can be enforced by virtue of the principles of equity and good conscience in the other parts of the territories subject to the government of the East India Company ;

\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

The Indian Copyright Act (XX. of 1847) has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

- (1) Jaunsar Bawar.—See *Gazette of India*, May 31, 1879, Pt. I., p. 382 :
- (2) The scheduled portion of the Mirzapur District.—See *Gazette of India*, May 31, 1879, Pt. I., p. 383 :
- (3) Aden.—See *Gazette of India*, June 28, 1879, Pt. I., p. 434 :
- (4) The District of Silhat.—See *Gazette of India*, 1879, Pt. I., p. 631 :
- (5) The rest of Assam (except the North Lushai Hills).—See *Gazette of India*, 1897, Pt. I., p. 299 :
- (6) The Scheduled Districts of the Central Provinces.—See *Gazette of India*, 1879, Pt. I., p. 771 :
- (7) Sindh.—See *Gazette of India*, 1880, Pt. I., p. 672 :
- (8) West Jalpaiguri.—See *Gazette of India*, 1881, Pt. I., p. 74 :
- (9) The District of Hazaribagh, Lohardaga, and Manbhum, and pargana Dhalbhum, and the Kolhan, in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I., p. 504 :

And whereas for the encouragement of learning it is desirable that the existence of the said right should be placed beyond doubt, and that the said right should be made capable of easy enforcement in every part of the said territories;

And whereas it is doubtful whether the Act of Parliament, 5 & 6 Vict., c. 45,\* entitled "*An Act to amend the Law of Copyright*," although such Act extend to every part of the British dominions, has made appropriate and sufficient provision for the enforcement in every part of the said territories subject to the government of the East India Company of the said right by proprietors thereof; and whether the said Act of Parliament has made provision for the enforcement of the said right by or against any persons not being subject to the jurisdiction of the Courts established by Her Majesty's Charter:

1. It is therefore hereby enacted that the copyright in every

Duration of copy-right in book published in the lifetime of its author within the said territories after the passing of the Act of Parliament,

3 & 4 Wm. IV., c. 85,† entitled "*An Act for effecting an arrangement with the East India Company and for the better government of His Majesty's Indian Territories till the 30th day of April 1854*," shall endure for the natural life of such author, and for the further term of seven years commencing at the time of his death, and shall be the property of such author and his assigns: Provided always

Proprietorship in book published after author's death. that, if the said term of seven years shall expire before the end of forty-two years from the publication of such book, the copyright shall in that

(10) The Island of Perim.—See *Gazette of India*, 1886, Pt. I., p. 5:

(11) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismaili Khan, and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 8.

(12) The District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts:—

(1) The Districts of Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606:

(2) The North Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 506:

(3) Upper Burma except the Shan States.—See *Gazette of India*, 1893, Pt. II., p. 272.

\* Short title, "*The Indian Copyright Act, 1842*."—See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† Short title, "*The Government of India Act, 1833*."—See the Short Titles Act (59 & 60 Vict., c. 14).

case endure for such period of forty-two years; and that the copyright in every book published after the death of its author and after the passing of the Act of Parliament last aforesaid shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript, from which such book shall be first published, and his assigns.\*

2. And whereas it is expedient to provide against the suppression of books of importance to the public; It is enacted that it shall be lawful for the Governor-General in Council, on complaint made to them that the proprietor of the copyright in any book published after the passing of this Act within the said territories has, after the death of its author, refused to republish or to allow the republication of the same, and that, by reason of such refusal, such book may be withheld from the public, to grant a license to such complainant to publish such book in such manner, and subject to such conditions as they may think fit, and it shall be lawful for such complainant to publish such book according to such license.†

3.‡ A book of registry,§ wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books and assignments thereof, and licenses affecting such copyright, shall be kept in the office of the Secretary to the Government of India for the Home Department, and shall, at all convenient times, be opened to the inspection of any person on payment of eight annas for every entry which shall be searched for or inspected in the said book.¶ Such officer shall, whenever thereunto reasonably required, give a copy

\* Taken from the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 3.

† Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), ss. 5 and 11, respectively.

‡ In s. 3, the words, "And it is hereby enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

§ Registration in the Catalogue of Books printed in British India, maintained under the provisions of the Press and Registration of Books Act (XXV. of 1867), is deemed an entry in the Book of Registry kept under this Act, and the provisions of this Act as to the Book of Registry apply, *mutatis mutandis*, to that Catalogue.—See s. 18 of Act XXV. of 1867.

¶ In s. 3, the words, "and that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

of any entry in such book, certified under his hand, to any person requiring the same, on payment to him of the sum of two rupees, and such copies, so certified, shall be received in evidence in all Courts and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence.\*

4. [*Punishment for making false entry in registry, &c.*] Repealed by Act XVII. of 1862, s. 2.

5.† It shall be lawful for the proprietor of copyright in any book published after the passing of the Copyright proprietor's right to make entries in registry. said Act of parliament, 3 & 4 Wm. IV., c. 85,‡ to make entry, in the registry book, of the title of such book, the time of the first publication, and the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of two rupees to the said Secretary.§

Fee. It shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment, so entered, shall be effectual in law to all intents and purposes whatsoever,|| and shall be of the same force and effect as if such assignment had been made by deed.¶

\* Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), ss. 5 and 11, respectively.

† In s. 5, the words, "And it is enacted that, after the passing of this Act," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

‡ Short title, "The Government of India Act, 1833."—See the Short Titles Act (59 and 60 Vict., c. 14).

§ In s. 5, the words, "and that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

|| In s. 5, the words, "without being subject to any stamp or duty," repealed by s. 2 and Sch. III. of the Indian Stamp Act (I. of 1879), have here been omitted. That Act exempts assignments of copyright under this section from stamp-duty.—See Sch. II., No. 5 Act I. of 1879. But as Act I. of 1879 has been superseded by the new Stamp Act (II. of 1899), see now Sch. I., No. 23 (*exemption*), of the latter Act.

¶ Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), s. 13.

6.\* If any person shall deem himself aggrieved by any entry,

Application by person aggrieved by entry in registry for order to vary or expunge it. made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Supreme Court of Calcutta, or, if

the Court shall not be then sitting, to any Judge of such Court sitting in chambers, for an order that such entry may be expunged or varied.† Upon any such application to the said Court, or to a Judge as aforesaid, such Court or Judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just, and the said Secretary shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.‡

7.§ If any person shall print or cause to be printed, either

Liability for infringement of copyright. for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall have in his possession, for sale or hire, any such book so

\* In s. 6, the words, "And it is enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

† In s. 6, the words, "and that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

‡ Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), ss. 14 and 15, respectively.

§ S. 7, as originally enacted, ran as follows, the words italicized in brackets being those which have been repealed by the Repealing Act (XII. of 1876) :—

7. [*And it is enacted that*] if any person shall [*after the passing of this Act*] print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall have in his possession, for sale or hire, any such book so unlawfully printed without such consent as aforesaid, such offender [*if he shall have so offended within the local limits of the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter*] shall be liable [*to a special action on the case in such Court; and if he shall have so offended in any other part of the territories subject to the Government of the East India Company*] to a suit in the [*Zila Court within the jurisdiction of which he shall have so offended, which shall and may be prosecuted in the same manner in which any other action of damages may be brought and prosecuted there; and if he shall have so offended in any such last-mentioned part of the territories subject to the Government of the East India Company in which there is no Zila Court, to a suit in the*] highest local Court exercising original civil jurisdiction [*in such part of the said territories*].

unlawfully printed without such consent as aforesaid, such offender .... shall be liable .... to a suit in the highest local Court exercising original Civil jurisdiction.\*

8†. In any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter under the provisions of this Act against any person for printing any such book for sale, hire, or exportation, or for selling, publishing, or exposing to sale or hire, or causing to be sold, published, or exposed to sale or hire, or for having in his possession for sale or hire, any such book so unlawfully printed, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action ;

and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when, and the place where, such book was first published ;

otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein, and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book

\* Cf. the Copyright Act, 1842 (5 & 6 Vict., c. 45), ss. 14 and 15, respectively.

† In s. 8, the words, " And it is hereby enacted that after the passing of this Act," repealed by the Repealing Act (XII. of 1876), have here been omitted.

than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.\*

9.† In any such suit or action as last aforesaid, brought in any Zila Court or other local Court as defendant's answer to suit. aforesaid, the defendant shall state in his answer all such matters as he means to rely on, and which, by the last preceding section, the defendant, in any suit or action brought in any of the Courts of Judicature established by Her Majesty's Charter, is required to give notice of in writing, otherwise such defendant shall be subject to the same consequences for any omission in his answer as a defendant is made subject to by the last preceding section for any omission in his notice.

Effect of omission.

10.‡ When any publisher or other person shall, within the said territories, before or at the time of the passing of this Act, but after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85,§ have projected, conducted, and carried on, or shall hereafter project, conduct, or carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof for publication in, or as part of, the same, and such work, volumes, parts, essays, articles, or portions shall have been, or shall hereafter be, composed under such employment on the terms that copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or conductor, who shall enjoy the same rights as if he

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\* Cf. the Copyright Act, 1842 (5 and 6 Vict., c. 45), s. 16.

† In s. 9, the words, "And it is hereby enacted that after the passing of this Act," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

‡ In s. 10, the words, "And it is hereby enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

§ Short title, "The Government of India Act, 1833."—See the Short Titles Act, 1896 (59 and 60 Vict., c. 14).

were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act, except only that, in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act :

Provided always that, during the term of twenty-eight years,

Consent of author to publication singly. the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent, previously obtained, of the author thereof of his assigns :

Provided also that nothing herein contained shall alter or

Employe's right to publish separately. affect the right of any person who shall have been or shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right ; but every author reserving, retaining, or having such right, shall be entitled to the copyright in such composition when published in a separate form according to this Act without prejudice to the right of such proprietor, projector, publisher or conductor as aforesaid.

**11.\*** The proprietor of the copyright in any encyclopædia,

Rights of proprietor of copyright on making entry in registry. review, magazine, periodical work, or other work published in a series of books or parts,† shall be entitled to all the benefits of the registration in the office of the Secretary to the Government of India for the Home Department, under this Act; on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first volume, number, or part first published after the passing of this Act in any such work which shall have been published heretofore, and after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85,‡ and the name and

\* In s 11 the words, " And it is hereby enacted that " repealed by the Repealing Act (XVI. of 1874), have here been omitted.

† *Reussac v. Thacker*, 1 Hyde 9, 12, 13.

‡ Short title, " The Government of India Act, 1833."—See the Short Titles Act, 1896 (59 and 60 Vict., c. 14).



place of abode of the proprietor thereof and of the publisher thereof when such publisher shall not also be the proprietor thereof.

**12.\*** All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof.

**13.†** If the case be within the jurisdiction of any of the Courts of Judicature established by Her Majesty's Charter, such registered proprietor shall be entitled to sue for and recover such copies or damages for the detention thereof in an action of detinue from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover; and‡ if the case be within the jurisdiction of any Zila Court or other local Court as aforesaid, the registered proprietor shall be entitled to sue for and recover such copies or damages for the detention or conversion thereof, in such form as is in use in the said Zila or other local Courts for the recovery of specific personal property or damages for the detention or conversion thereof.

**14.§** No proprietor of copyright in any book first published after the passing of the said Act of Parliament, 3 & 4 Wm. IV., c. 85,|| shall maintain, under the provisions of this Act, any action or suit at law or in equity, or any summary proceeding in respect of any infringement

\* In s. 12, the words, "And it is enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

† In s. 13, the words, "And it is enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

‡ In s. 13, the word "that," repealed by the Repealing Act (XII. of 1876), has here been omitted.

§ In s. 14, the words, "And it is enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

|| Short title, "The Government of India Act, 1833."—See the Short Titles Act, 1896 (59 and 60 Vict., c. 14),

of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry at the office of the said Secretary of such book pursuant to this Act :

— Provided always that the omission to make such entry shall not affect the copyright in any book, nor the right to sue or proceed in respect of the infringement thereof, except the right to sue or proceed in respect of the infringement thereof under the provisions of this Act.

**15.\*** If any action or suit shall be commenced or brought in any of the Courts of Judicature established by Her Majesty's Charter against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue and give the special matter in evidence ; and if, upon such action, a verdict shall be given for the defendant, or the plaintiff shall become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath in the said last-mentioned Courts.

**16.\*** All . . . . † indictments, informations, and other criminal proceedings for any offence which shall be committed against this Act, shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect.

**17.** [*Saving of pre-existing rights.*] Repealed by the Repealing Act (XIV. of 1870).

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\* In ss. 15 and 16, the words, " And it is enacted that," repealed by the Repealing Act (XVI. of 1874), have here been omitted.

† In s. 16, the words, " actions, suits, bills," repealed by the Indian Limitation Act (IX. of 1871), Sch. I., have here been omitted.

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## SCHEDULE.

## No. 1.

## ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of abode of the Proprietor of the Copy-right.	Date of first Publication.

## No. 2.

## FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK PREVIOUSLY REGISTERED.

Date of Entry.	Title of Book.	Assignor of the Copy-right.	Assignee of the Copy-right.
	[Set out the title of the book, and refer to the page of the registry book in which the original entry of the copy-right thereof is made.]		

THE  
COURT FEES ACT:

BEING

ACT VII. OF 1870

*(as amended up to Dec. 1912),*

WITH

AN APPENDIX

*containing Notification No. 4650 dated Sep. 10, 1899,  
reducing and remitting Court-fees,*

AND

A GENERAL INDEX.



Calcutta:

PRINTED BY B. BARAL,  
THE CRANENBURGH'S "LAW-PUBLISHING PRESS,"  
3 TO 5, BOW STREET.

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1912.

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CALCUTTA:

PRINTED BY D. DARAL,  
AT THE "LAW-PUBLISHING PRESS"  
3 TO 5, BOW STREET.

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# STATEMENT OF REPEALS AND AMENDMENTS.

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SECTION 2 ADDED BY	...	...	...	...	ACT X. OF 1901, s. 2.
SECTION 2 AND SCHEDULE III. REPEALED BY	...	...	...	...	ACT XIV. OF 1870, SCH.
SECTION 15 AND SCHEDULE I., ART. 2, AMEND-					
ED BY	...	...	...	...	ACT XX. OF 1870, s. 1.
SCHEDULE I. REPEALED IN PART BY	...	...	...	...	ACT VIII. OF 1871, SCH. I.
SECTION 19, CL. XXIV., AMENDED BY	...	...	...	...	ACT XV. OF 1872, s. 2.
SECTIONS 19A TO 19H ADDED BY	...	...	...	...	ACT XIII. OF 1875, s. 6.
SECTIONS 19A, 19 E, AND 19-H AMENDED BY	...	...	...	...	ACT X. OF 1901, s. 3.
SCHEDULE I., ART. 13, ADDED ( <i>for the Punjab</i> ) BY	...	...	...	...	ACT XVIII. OF 1884, s. 71, AS AMENDED BY ACT XXV. OF 1899, s. 6.
SECTION 20 REPEALED IN PART, AND SECTION 23					
WHOLLY, BY	...	...	...	...	ACT XVII. OF 1887, SCH.
SCHEDULES I. AND II. REPEALED IN PART AND					
AMENDED BY	...	...	...	...	ACT VI. OF 1889, s. 18.
SECTION 19, CL. VIII., AND SCHEDULE I., AMEND-					
ED BY	...	...	...	...	ACT VII. OF 1889, s. 13 (2).
SCHEDULE I. AMENDED BY...	...	...	...	...	ACT XI. OF 1889, s. 84.
SECTION 19. CL. IV., REPEALED, AND SCHEDULE					
II., ART. 1, REPEALED IN PART, BY	...	...	...	...	ACT XIII. OF 1898, SCH.
SECTIONS 19H, 19I, 19J, 19K, INSERTED BY	...	...	...	...	ACT XI. OF 1899, s. 2.
SECTIONS 3, 7, 10, 19, 19C, AND 19G REPEALED IN					
PART, AND SECTIONS 24, 32, AND SCHEDULE II.,					
ARTS. 8 AND 9 REPEALED, AND SECTION 34,					
SCHEDULE I., ART. 2, AND SCHEDULE II., ART.					
4, AMENDED BY	...	...	...	...	ACT XII. OF 1891, SCH.
SCHEDULE I., ART. 14, CL. 1, SUBSTITUTED ( <i>for</i>					
<i>Lower Burma</i> ) BY	...	...	...	...	ACT VI. OF 1900, SCH. I., PT. I.
SCHEDULE I., ART. 15, ADDED ( <i>for Upper Bur-</i>					
<i>ma</i> ) BY	...	...	...	...	REG. I. OF 1896, s. 36.
SCHEDULE II., ART. 10, REPEALED BY	...	...	...	...	ACT VIII. OF 1890, SCH.
SCHEDULE III. AND ANNEXURES ADDED BY	...	...	...	...	ACT XI. OF 1869, s. 3.

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# THE COURT FEES ACT, 1870.

(Act VII. of 1870.)

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## THE COURT FEES ACT, 1870.

(Act VII. of 1870).\*

[PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.]

*Received His Excellency's Assent on the 11th March 1870.*

## CHAPTER I.

## PRELIMINARY.

- Short title.** 1. This Act may be called the Court Fees Act, 1870.
- Extent of Act.** It extends to the whole of British India :
- Commencement of Act.** And it shall come into force on the first day of April 1870.

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\* For the Statement of Objects and Reasons, see *Gazette of India*, 1869, Pt. V., p. 57; for Proceedings in Council, see *ibid.*, 1869, Supplement, pp. 1179 and 1452; *ibid.*, 1870, Supplement, pp. 52, 578, 421, 427, and 434.

Act VII. of 1870 has been declared in force—

- in Upper Burma generally (except the Shan States) by the Burma Laws Act (XIII. of 1898), s. 4 (1), Sch. I.;
- in British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3;
- in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899);
- in the Sub-division of Angul, by the Angul District Regulation (I. of 1894), s. 3.

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely—

- the District of Hazaribagh (see *Gazette of India*, 1881, Pt. I., p. 507);
- the District of Lohardaga (now called the Ranchi District) (see *Calcutta Gazette*, 1899, Pt. I., p. 44; *ib.*, 1881, Pt. I., p. 508);
- the District of Lohardaga then included the present District of Palamau separated in 1894;

In all such suits, the plaintiff shall state the amount at which he values the relief sought . . . :\*

v. In suits for the possession of land, houses, and gardens—  
     for possession of land, houses, and gardens;      according to the value of  
     the subject-matter; and  
     such value shall be deemed to be—

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue,

and such revenue is permanently settled—

ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid;

and such revenue is settled, but not permanently—five times the revenue so payable :

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the land during the year next before the date of presenting the plaint—fifteen times such nett profits;

but, where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above mentioned—the market-value of the land :

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\* The words, "and the provisions of the Code of Civil Procedure, section thirty-one shall apply as if, for the word 'claim,' the words 'relief sought' were substituted," repealed by the repealing and Amending Act (XII. of 1891), have been omitted.

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest :

ix. In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute, according to the principal money expressed to be secured by the instrument of mortgage :

x. In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration ;

(b) of a contract of mortgage—according to the amount agreed to be secured ;

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any), and of the rent agreed to be paid during the first year of the term ;

(d) of an award—according to the amount or value of the property in dispute :

xi. In the following suits between landlord and tenant—

(a) for the delivery by tenant of the counterpart of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc)\* for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy :

(d) to contest a notice of ejectment,

**11.** In suits for mesne-profits, or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**12. i.** Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

ii. But, whenever any such suit comes before a Court of Appeal, Reference, or Revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph ii., shall apply.

**13.** If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure,\* is ordered to be received, or if a suit is remanded in appeal on any of the grounds mentioned in section 351† of the same Code

\* This reference should now be read as applying to Act V. of 1908. —See s. 158 of that Act.

† The reference to s. 351 of the Code of Civil Procedure (Act VIII. of 1859), corresponding with s. 562 of Act XIV. of 1882, should now be read as applying to Order XLI., rule 23 (First Schedule), of Act V. of 1908. (the new Civil Procedure Code).—See s. 158 of the last mentioned Act.

for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal :

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

**14.** Where an application\* for a review of judgment† is presented on or after the ninetieth day from the date of the decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.‡

**15.** Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application§ as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

**16.** [*Repealed by Act V. of 1908, Sch. V.*]

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\* As to refund of fees paid on applications to the Chief Court or the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under s. 622 of the Code of Civil Procedure (Act XIV. of 1882), see the Punjab Courts Act (XVIII. of 1884), s. 72, as amended by the Punjab Courts Act (XXV. of 1899).

† As to application for review of judgment, see the Code of Civil Procedure (Act XIV. of 1882), s. 623.

‡ See Sch. I., Nos. 4 and 5 *infra*.

§ The word "application" has been substituted for the original words, "plaint or memorandum of appeal," by the Court Fees Act Amendment Act (XX. of 1870), s. 1.





be, and has, in consequence, paid too low a court-fee thereon, the Chief Controlling Revenue Authority "for the local area"\* in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

**19F.** In the case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by a law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

**19G.†** Where too low a court-fee has been paid on any probate or letters administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such

Executors, &c., not paying full court-fee on probates, &c., within six months after discovery of under-payment.

\* The words quoted have been substituted for the words "of the province" by the Court Fees (Amendment) Act (X. of 1901).

† As to recovery of penalties or forfeitures under s. 19G, see the Probate and Administration Act (VI. of 1889), s. 20 (1).

probate or letters does not, within six months' . . . \* after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

**19H.† (1)** Where an application for probate or letters of administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority "for the local area in which the High Court is situated."‡

(3) The Collector, within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect, or cause to be inspected, and take, or cause to be taken, copies of the record of any case in which application for probate or letters of administration has been made; and, if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence, and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court

\* Here the words and figures, "after the first day of April 1875, or," repealed by the Repealing and Amending Act (XII. of 1891), have been omitted.

† Ss. 19H, 19I, 19J, and 19K have been inserted after 19G by the Court Fees Act Amendment Act (XI. of 1899), s. 2, the original s. 19H having since been repealed by the Guardians and Wards Act (VIII. of 1890), s. 2 and Sch.

‡ The words quoted have been substituted for the words "of the province" by the Court Fees (Amendment) Act (X. of 1901).

probate or letters does not, within six months . . . \* after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

19H.† (1) Where an application for probate or letters of

administration is made to any Court other than a High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority "for the local area in which the High Court is situated."‡

(3) The Collector, within the local limits of whose revenue jurisdiction the property of the deceased or any part thereof is, may at any time inspect, or cause to be inspected, and take, or cause to be taken, copies of the record of any case in which application for probate or letters of administration has been made; and, if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence, and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court

\* Here the words and figures, "after the first day of April 1875, or," repealed by the Repealing and Amending Act (XII. of 1891), have been omitted.

† Ss. 19H, 19I, 19J, and 19K have been inserted after 19G by the Court Fees Act Amendment Act (XI. of 1899), s. 2, the original s. 19H having since been repealed by the Guardians and Wards Act (VIII. of 1890), s. 2 and Sch.

‡ The words quoted have been substituted for the words "of the province" by the Court Fees (Amendment) Act (X. of 1901).

before which the application for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865,\* or, as the case may be, by section 98 of the Probate and Administration Act, 1881.†

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

191.† (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the Third Schedule, and the Court is satisfied that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation.

Payment of court-fees in respect of probates and letters of administration.

\* Act X. of 1865.

† Act V. of 1881.

‡ See foot-note (†) at p. 25, ante.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, sub-section (4).

**19J.\*** (1) Any excess fee found to be payable on an inquiry

held under section 19H, sub-section (6), Recovery of penalties, &c. and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E, or of any court-fee under section 19E in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

**19K.\*** Nothing in section 6 or section 28 shall apply to probates or letters of administration.

## CHAPTER IV.

### PROCESS FEES.

Rules as to costs of processes.

**20.** The High Court shall, as soon as may be, make rules† as to the following matters:—

\* See foot note (†) at p. 25, *ante*.

† As to the power to make rules and prescribe fees for processes in Lower Burma, see the Lower Burma Courts Act (XI. of 1889), ss. 89 and 91. As to the power of the Judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma, see the Upper Burma Civil Courts Regulation (I. of 1896), s. 30 (1) (a). As to the power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act (XIV. of 1869), see s. 42 of that Act. As to the computation of certain fees on applications under s. 95 of the North-Western Provinces Rent Act (XII. of 1881), see that section as amended by s. 2 of the North-Western Provinces Rent Act (XIV. of 1886).

As to power of the Chief Commissioner of British Baluchistan to make rules and prescribe fees, see the British Baluchistan Criminal Justice Regulation (VII. of 1895), s. 20 (1) (a), and the British Baluchistan Civil Justice Regulation (IX. of 1896), s. 92 (a): (For continuation, see the rest of this note at the foot of next page.)

i. the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil "and Revenue"\* Courts established within the local limits of such jurisdiction;

ii. the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

iii. the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

All such rules, alterations, and additions shall, after being confirmed by the Local Government, and sanctioned by the Governor-General of India in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

**21.** A table in the English and Vernacular languages, showing the fee chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

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*Continued from p. 27, supra.*

For notifications issued under the powers conferred by this section in—

- (1) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 36 and 37;
- (2) Burma, *see* *Burma Gazette*, 1891, Pt. I., p. 14;
- (3) Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 18 and 19;
- (4) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 33;
- (5) Central Provinces *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 11.

\* In Punjab the words quoted in s. 20, cl. i, has been repealed by the Punjab Land Revenue Act (XVII. of 1887).

**22.** Subject to rules\* to be made by the High Court, and approved by the Local Government and the Governor-General of India in Council,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto;

and, for the purposes of this section, every Court of Small Causes established under Act No. XI. of 1865† (*to consolidate and amend the Law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

**23.‡** Subject to rules§ to be framed by the Chief Controlling Revenue Authority, and approved by the Local Government and the Governor-General of India in Council, every officer performing the functions of a Collector of a district shall fix, and from time to time after, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

\* For rules made under the powers conferred by this section in—  
Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. xxv;

Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 19;

N.-W. P. and Oudh, *see* N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 34;

Central Provinces, *see* Central Provinces List of Local Rules and Orders Ed. 1896 p. 11.

† The reference to Act XI. of 1865 should now be read as made to the Provincial Small Cause Courts Act (IX. of 1887) s. 2 (2) and (3).

‡ In the Punjab, s. 23, has been repealed.—*See* the Punjab Land Revenue Act (XVII. of 1887).

§ For rules framed under the powers conferred by this section in—

Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. xxv.;

Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 11;

Assam, *see* Assam Manual of Local Rules and Orders, 1893, p. x.

24. [Repealed by the Repealing and Amending Act (XII, of 1891).]

## CHAPTER V.

### OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3, or chargeable under this Act, shall be collected by stamps.

26. The stamps used to denote any fee chargeable under this Act shall be impressed or adhesive, or partly impressed and partly adhesive, as the Governor-General of India in Council may, by notification in the *Gazette of India*, from time to time direct.\*

Rules for supply, number, renewal, and keeping of accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating—

- (a) the supply of stamps to be used under this Act,
- (b) the number of stamps to be used for denoting any fee chargeable under this Act,
- (c) the renewal of damaged or spoiled stamps, and
- (d) the keeping of accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3, in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped.

But, if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as

\* For rules as to levy of court-fees by adhesive and impressed stamps, see *Gazette of India*, 1883, Pt. I., p. 189.



the case may be; or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

**29.** Where any such document is amended in order merely

*Amended document.*

to correct a mistake, and to make it conform to the original intention of the

parties, it shall not be necessary to impose a fresh stamp.

**30.** No document requiring a stamp under this Act shall be

*Cancellation of stamp.*

filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

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## CHAPTER VI.

### MISCELLANEOUS.

**31. i.** Whenever an application or petition containing a

*Repayment of fees paid on applications to Criminal Courts.*

complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

ii. In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

iii. When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

iv. All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

**32.** [*Repealed by the Repealing and Amending Act (XII. of 1891).*]

**33.** Whenever the filing or exhibition in a Criminal Court of a document in respect of which the Admission in criminal cases of documents on which proper fee has not been paid. proper fee has not been paid, is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 4 or section 6 shall be deemed to prohibit such filing or exhibition.

**34.\*** (1) The Local Government may, from time to time, make rules for regulating the sale of stamps to be used under this Act, the Sale of stamps. persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**35.** The Governor-General of India in Council may, from time to time, by notification† in the fees. *Gazette of India*, reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the first and second schedules to this Act annexed, and may, in like manner, cancel or vary such order.

**36.** Nothing in Chapters II. and V. of this Act applies to the Saving of fees to certain commission payable to the Accountant-officers of High Courts. General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

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\* S. 34 has been substituted for the original by the Repealing and Amending Act (XII. of 1891).

† For Notification No. 4650 dated September 10, 1839, as amended and added to by subsequent Notifications, see Appendix, *infra*.

## SCHEDULE I.

*Ad-valorem Fees.*

NUMBER.		PROPER FEE.
	When the amount or value of the subject-matter in dispute does not exceed five rupees ...	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees ...	Six annas.
1. Plaint, "written statement pleading, a set-off, or counter-claim,"* or memorandum of appeal (not otherwise provided for in this Act), "or of cross-objection,"* presented to any Civil or Revenue Court, except those mentioned in section 3.†	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees, up to one thousand rupees ...	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees, up to five thousand rupees ...	Five rupees.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees, up to ten thousand rupees ...	Ten rupees.

\* In article 1, column 1, the words quoted are inserted by Act V. of 1908 (the new Civil Procedure Code), Schedule IV.

† To ascertain the proper fee leviable on the institution of a suit, see the Table annexed to this Schedule at p. 44, *infra*.

## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(Continued).

NUMBER.		PROPER FEE.
1. <i>Plaint, written statement, pleading, a set-off, or counter-claim, or memorandum of appeal (not otherwise provided for in this Act), or of cross-objection, presented to any Civil or Revenue Court, except those mentioned in section 3—(contd.)</i>	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees up to twenty thousand rupee ...	Fifteen rupees.
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees, up to thirty thousand rupees ...	Twenty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees. ...	Twenty rupees.
	When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof in excess of fifty thousand rupees ...	Twenty-five rupees.
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

## SCHEDULE I.—(continued.)

*Ad-valorem* (continued).

NUMBER.		PROPER FEE.
2. Plaint* in a suit for possession under "the Specific Relief Act, 1877, s. 9."†	... ..	A fee of one half the amount prescribed in the foregoing-scale.
3. [Repealed by Act VIII. of 1871.]		
4. Application for review of judgment,‡ if presented on or after the ninetieth day from the date of the decree.	... ..	The fee leviable on the plaint or memorandum of appeal.
5. Application for review of judgment,‡ if presented before the ninetieth day from the date of the decree.	... ..	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office, or by any other judicial or Executive Authority—	

\* The words "or memorandum of appeal," repealed by the Court Fees Act Amendment Act (XX. of 1870), have here been omitted.

† The words quoted have been substituted by the Repealing and Amending Act (XII. of 1891) for the words "Act No. XIV. of 1859 to provide for the limitation of suits), section 15."

‡ As to application for review of judgment, see now the new Code of Civil Procedure (Act V. of 1908), s. 114 and O. XLVII., r. 1.

## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(continued).

NUMBER.		PROPER FEE.
6. Copy or translation of a judgment or order not being, or having the force of, a decree— <i>(ctd.)</i> .	(a.)—If the amount or value of the subject-matter is fifty or less than fifty rupees ...	Four annas.
	(b.)—If such amount or value exceeds fifty rupees ...	Eight annas.
	When such judgment or order is passed by a High Court ...	One rupee.
	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
7. Copy of a decree or order having the force of a decree.	(a.)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees ...	Eight annas.
	(b.)—If such amount or value exceeds fifty rupees ...	One rupee.
	When such decree or order is made by a High Court ...	Four rupees.

## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(continued).

NUMBER.	PROPER FEE.
<p>8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1879,* when left by any party to a suit or proceeding in place of the original withdrawn.</p>	<p>(a.)—When the stamp-duty chargeable on the original does not exceed eight annas ... The amount of the duty chargeable on the original.</p> <p>(b.)—In any other case ... Eight annas.</p>
<p>9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or of the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.</p>	<p>For every three hundred and sixty words or fraction of three hundred and sixty words ... Eight annas.</p>
<p>10. [<i>Repealed by the Guardians and Wards Act (VIII. of 1890).</i>]</p>	

\* See now the Indian Stamp Act (II. of 1899). The reference originally was to Act XVIII. of 1869.

## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(continued).

NUMBER.		PROPER FEE.
11.* Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ...	Two per centum on such amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ...	Two and one-half per centum on amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value:
	Provided that, when, after the grant of a certificate under the Succession Certificate Act, 1889,† or under the Regulation of the Bombay Code No. VIII. of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

\* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13 (1), for Nos. 11 and 12 as originally enacted. In Article 11, the entries in the second and third columns are substituted for the original by Act VII. of 1910.

† Act VII. of 1889.



## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(continued).

NUMBER.	PROPER FEE.
12.* Certificate under the Succession Certificate Act, 1889.	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
In any case	...
	NOTE.—(1.) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

\* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13 (1), for Nos. 11 and 12 as originally enacted.



## SCHEDULE I.—(continued).

*Ad-valorem Fees*—(continued).

NUMBER.		PROPER FEE.
12A.* Certificate under the Regulation of the Bombay Code, No. VIII. of 1827.	(1) As regards debts and securities ... ..	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889,† or in respect of an extension of such a certificate, as the case may be.
	(2) As regards other property in respect of which the certificate is granted—	
	when the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees ;	
	when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ;	Two per centum on such amount or value.
	when such amount or value exceeds fifty thousand rupees ... ..	Two and one half per centum on such amount or value.
		Three per centum on such amount or value."

\* Nos. 11, 12, and 12A have been substituted, by the Succession Certificate Act (VII. of 1889), s. 13 (r), for Nos. 11 and 12 as originally enacted. The entries in the second and third columns of article 12A are substituted for the original by Act VII. of 1910.

† Act VII. of 1889.

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees leviable on the Institution of Suits.*

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
0	5	0 6 0
5	10	0 12 0
10	15	1 2 0
15	20	1 8 0
20	25	1 14 0
25	30	2 4 0
30	35	2 10 0
35	40	3 0 0
40	45	3 6 0
45	50	3 12 0
50	55	4 2 0
55	60	4 8 0
60	65	4 14 0
65	70	5 4 0
70	75	5 10 0
75	80	6 0 0
80	85	6 6 0
85	90	6 12 0
90	95	7 2 0
95	100	7 8 0
100	110	8 4 0
110	120	9 0 0
120	130	9 12 0
130	140	10 8 0
140	150	11 4 0
150	160	12 0 0
160	170	12 12 0
170	180	13 8 0
180	190	14 4 0
190	200	15 0 0
200	210	15 12 0
210	220	16 8 0
220	230	17 4 0

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees, &c.—(continued).*

When the amount or value of the subject- matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A. P.
230	240	18 0 0
240	250	18 12 0
250	250	19 8 0
260	270	20 4 0
270	280	21 0 0
280	290	21 12 0
290	300	22 8 0
300	310	23 4 0
310	320	24 0 0
320	330	24 12 0
330	340	25 8 0
340	350	26 4 0
350	360	27 0 0
360	370	27 12 0
370	380	28 8 0
380	390	29 4 0
390	400	30 0 0
400	410	30 12 0
410	420	31 8 0
420	430	32 4 0
430	440	33 0 0
440	450	33 12 0
450	460	34 8 0
460	470	35 4 0
470	480	36 0 0
480	490	36 12 0
490	500	37 8 0
500	510	38 4 0
510	520	39 0 0
520	530	39 12 0
530	540	40 8 0
540	550	41 4 0
550	560	42 0 0
560	570	42 12 0

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees, &c.—(continued).*

When the amount or value of the subject- matter exceeds.	But does not exceed.	Proper Fee.
Rs.	Rs.	Rs. A. P.
570	580	43 8 0
580	590	44 4 0
590	600	45 0 0
600	610	45 12 0
610	620	46 8 0
620	630	47 4 0
630	640	48 0 0
640	650	48 12 0
650	660	49 8 0
660	670	50 4 0
670	680	51 0 0
680	690	51 12 0
690	700	52 8 0
700	710	53 4 0
710	720	54 0 0
720	730	54 12 0
730	740	55 8 0
740	750	56 4 0
750	760	57 0 0
760	770	57 12 0
770	780	58 8 0
780	790	59 4 0
790	800	60 0 0
800	810	60 12 0
810	820	61 8 0
820	830	62 4 0
830	840	63 0 0
840	850	63 12 0
850	860	64 8 0
860	870	65 4 0
870	880	66 0 0
880	890	66 12 0
890	900	67 8 0
900	910	68 4 0

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees, &c.—(continued).*

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
910	920	69 0 0
920	930	69 12 0
930	940	70 8 0
940	950	71 4 0
950	960	72 0 0
960	970	72 12 0
970	980	73 8 0
980	990	74 4 0
990	1,000	75 0 0
1,000	1,100	80 0 0
1,100	1,200	85 0 0
1,200	1,300	90 0 0
1,300	1,400	95 0 0
1,400	1,500	100 0 0
1,500	1,600	105 0 0
1,600	1,700	110 0 0
1,700	1,800	115 0 0
1,800	1,900	120 0 0
1,900	2,000	125 0 0
2,000	2,100	130 0 0
2,100	2,200	135 0 0
2,200	2,300	140 0 0
2,300	2,400	145 0 0
2,400	2,500	150 0 0
2,500	2,600	155 0 0
2,600	2,700	160 0 0
2,700	2,800	165 0 0
2,800	2,900	170 0 0
2,900	3,000	175 0 0
3,000	3,100	180 0 0
3,100	3,200	185 0 0
3,200	3,300	190 0 0
3,300	3,400	195 0 0
3,400	3,500	200 0 0

## SCHEDULE I.—(continued).

*Table of Rules of Ad-valorem Fees, &c.—(continued).*

When the amount of value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
3,500	3,600	205 0 0
3,600	3,700	210 0 0
3,700	3,800	215 0 0
3,800	3,900	220 0 0
3,900	4,000	225 0 0
4,000	4,100	230 0 0
4,100	4,200	235 0 0
4,200	4,300	240 0 0
4,300	4,400	245 0 0
4,400	4,500	250 0 0
4,500	4,600	255 0 0
4,600	4,700	260 0 0
4,700	4,800	265 0 0
4,800	4,900	270 0 0
4,900	5,000	275 0 0
5,000	5,250	285 0 0
5,250	5,500	295 0 0
5,500	5,750	305 0 0
5,750	6,000	315 0 0
6,000	6,250	325 0 0
6,250	6,500	335 0 0
6,500	6,750	345 0 0
6,750	7,000	355 0 0
7,000	7,250	365 0 0
7,250	7,500	375 0 0
7,500	7,750	385 0 0
7,750	8,000	395 0 0
8,000	8,250	405 0 0
8,250	8,500	415 0 0
8,500	8,750	425 0 0
8,750	9,000	435 0 0
9,000	9,250	445 0 0
9,250	9,500	455 0 0
9,500	9,750	465 0 0



## SCHEDULE I.—(continued).

## Table of Rates of Ad-valorem Fees, &amp;c.—(continued).

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
9,750	10,000	475 0 0
10,000	10,500	490 0 0
10,500	11,000	505 0 0
11,000	11,500	520 0 0
11,500	12,000	535 0 0
12,000	12,500	550 0 0
12,500	13,000	565 0 0
13,000	13,500	580 0 0
13,500	14,000	595 0 0
14,000	14,500	610 0 0
14,500	15,000	625 0 0
15,000	15,500	640 0 0
15,500	16,000	655 0 0
16,000	16,500	670 0 0
16,500	17,000	685 0 0
17,000	17,500	700 0 0
17,500	18,000	715 0 0
18,000	18,500	730 0 0
18,500	19,000	745 0 0
19,000	19,500	760 0 0
19,500	20,000	775 0 0
20,000	21,000	795 0 0
21,000	22,000	815 0 0
22,000	23,000	835 0 0
23,000	24,000	855 0 0
24,000	25,000	875 0 0
25,000	26,000	895 0 0
26,000	27,000	915 0 0
27,000	28,000	935 0 0
28,000	29,000	955 0 0
29,000	30,000	975 0 0
30,000	32,000	995 0 0
32,000	34,000	1,015 0 0
34,000	36,000	1,035 0 0

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees, &c.—(continued).*

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.		
Rs.	Rs.	Rs.	A.	P.
36,000	38,000	1,055	0	0
38,000	40,000	1,075	0	0
40,000	42,000	1,095	0	0
42,000	44,000	1,115	0	0
44,000	46,000	1,135	0	0
46,000	48,000	1,155	0	0
48,000	50,000	1,175	0	0
50,000	55,000	1,200	0	0
55,000	60,000	1,225	0	0
60,000	65,000	1,250	0	0
65,000	70,000	1,275	0	0
70,000	75,000	1,300	0	0
75,000	80,000	1,325	0	0
80,000	85,000	1,350	0	0
85,000	90,000	1,375	0	0
90,000	95,000	1,400	0	0
95,000	1,00,000	1,425	0	0
1,00,000	1,05,000	1,450	0	0
1,05,000	1,10,000	1,475	0	0
1,10,000	1,15,000	1,500	0	0
1,15,000	1,20,000	1,525	0	0
1,20,000	1,25,000	1,550	0	0
1,25,000	1,30,000	1,575	0	0
1,30,000	1,35,000	1,600	0	0
1,35,000	1,40,000	1,625	0	0
1,40,000	1,45,000	1,650	0	0
1,45,000	1,50,000	1,675	0	0
1,50,000	1,55,000	1,700	0	0
1,55,000	1,60,000	1,725	0	0
1,60,000	1,65,000	1,750	0	0
1,65,000	1,70,000	1,775	0	0
1,70,000	1,75,000	1,800	0	0
1,75,000	1,80,000	1,825	0	0
1,80,000	1,85,000	1,850	0	0

## SCHEDULE I.—(continued).

*Table of Rates of Ad-valorem Fees, &c.—(continued).*

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
1,85,000	1,90,000	1,875 0 0
1,90,000	1,95,000	1,900 0 0
1,95,000	2,00,000	1,925 0 0
2,00,000	2,05,000	1,950 0 0
2,05,000	2,10,000	1,975 0 0
2,10,000	2,15,000	2,000 0 0
2,15,000	2,20,000	2,025 0 0
2,20,000	2,25,000	2,050 0 0
2,25,000	2,30,000	2,075 0 0
2,30,000	2,35,000	2,100 0 0
2,35,000	2,40,000	2,125 0 0
2,40,000	2,45,000	2,150 0 0
2,45,000	2,50,000	2,175 0 0
2,50,000	2,55,000	2,200 0 0
2,55,000	2,60,000	2,225 0 0
2,60,000	2,65,000	2,250 0 0
2,65,000	2,70,000	2,275 0 0
2,70,000	2,75,000	2,300 0 0
2,75,000	2,80,000	2,325 0 0
2,80,000	2,85,000	2,350 0 0
2,85,000	2,90,000	2,375 0 0
2,90,000	2,95,000	2,400 0 0
2,95,000	3,00,000	2,425 0 0
3,00,000	3,05,000	2,450 0 0
3,05,000	3,10,000	2,475 0 0
3,10,000	3,15,000	2,500 0 0
3,15,000	3,20,000	2,525 0 0
3,20,000	3,25,000	2,550 0 0
3,25,000	3,30,000	2,575 0 0
3,30,000	3,35,000	2,600 0 0
3,35,000	3,40,000	2,625 0 0
3,40,000	3,45,000	2,650 0 0
3,45,000	3,50,000	2,675 0 0
3,50,000	3,55,000	2,700 0 0

## SCHEDULE I.—(concluded).

*Table of Rates of Ad-valorem Fees, &c.—(concluded).*

When the amount or value of the subject- matter exceeds	But does not exceed	Proper Fee.
Rs.	Rs.	Rs. A. P.
3,55,000	3,60,000	2,725 0 0
3,60,000	3,65,000	2,750 0 0
3,65,000	3,70,000	2,775 0 0
3,70,000	3,75,000	2,800 0 0
3,75,000	3,80,000	2,825 0 0
3,80,000	3,85,000	2,850 0 0
3,85,000	3,90,000	2,875 0 0
3,90,000	3,95,000	2,900 0 0
3,95,000	4,00,000	2,925 0 0
4,00,000	4,05,000	2,950 0 0
4,05,000	4,10,000	2,975 0 0
4,10,000	.....	3,000 0 0

## SCHEDULE II.

*Fixed Fees.*

NUMBER.		PROPER FEE.
1. Application* or petition.	<p>(a.)—When presented to any officer of the Customs or Excise Department, or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;</p> <p>or when presented to any officer of land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement.</p> <p>or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely such conservancy or improvement;</p>	One anna.

\* In writing.—2 N.-W. P. 418.

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.		PROPER FEE.
1. Application or petition—(contd.)	<p>or when presented to any Civil Court* other than a principal Civil Court of original jurisdiction,† or to any Court of Small Causes constituted under Act No. XI. of 1865,‡ or under Act No. XVI. of 1868, section 20,§ or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;</p> <p>or when presented to any Civil, Criminal, or Revenue Court, or to any Board or Executive Office for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of</p>	One anna.

\* 7 Bom. A. C. J. 109.

† Here the words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859," have been omitted having been repealed by the Cantonments Act (XIII. of 1889), s. 2 and Sch.

‡ See now the Provincial Small Cause Courts Act (IX. of 1887), by which Act XI. of 1865 has been repealed.

§ See now s. 25 of the Bengal, North-Western Provinces, and Assam Civil Courts Act (XII. of 1887).

SCHEDULE II.—(*continued*).*Fixed Fees*—(*continued*).

NUMBER.		PROPER FEE.
1. Application or petition—( <i>contd.</i> )	<p>any other document* on record in such Court or office.</p> <p>(b.)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code,† arrest without warrant, and presented to any Criminal Court;</p> <p>or when presented to a Civil, Criminal, or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;</p> <p>or to deposit in Court revenue or rent;</p> <p>or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.</p>	<p>} One anna.</p> <p>} Eight annas.</p>

\* 6 B. L. R., App., 137.

† See now the Code of Criminal Procedure (Act V. of 1898).

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.		PROPER FEE.
1. Application or petition—(Concl'd.)	(c.)—When presented to a Chief Commissioner or other Chief Controlling Revenue or executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division, and not otherwise provided for by this Act.	One rupee.
	(d.)—When presented to a High Court ...	Two rupees.
1A. Application to any Civil Court that records may be called for from another Court.*	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of article 1 of this schedule.
2. Application for leave to sue as a pauper ...	... ..	Eight annas.
3. Application for leave to appeal as a pauper ...	(a.)—When presented to a District Court ...	One rupee.
	(b.)—When presented to a Commissioner or a High Court ...	Two rupees.

\* Inserted by Act XIV. of 1911.



## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.	PROPER FEE.		
4. Complaint or memorandum of appeal in a suit to obtain possession under Act No. XVI. of 1838; or "the Mamlatdars' Courts Act. 1876."*	...	...	...
5. Complaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	...	...	...
6.† Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure. 1882,‡ or the Code of Civil Procedure.	...	...	...
7. Undertaking under section 49 of the Indian Divorce Act.	...	...	...

\* The words quoted have been substituted, by the Repealing and Amending Act (XII. of 1891), for the words "Bombay Act No. V. of 1864 (to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law)."

† Art. 6 has been substituted for the original by the Probate and Administration Act (VI. of 1889), s. 18 (2). The original article ran as follows: "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any Court or executive authority."

‡ Act XIV. of 1882, but *see* Act V. of 1908, the Code now in force, and whereby the former has been repealed *in toto*.

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.	PROPER FEE.
8 & 9. [ <i>Repealed by the Repealing and Amending Act (XII. of 1891).</i> ]	
10. Mukhtarnama or Vakalatnama.	When presented for the conduct of any one case—
	(a)—to any Civil or Criminal Court other than a High Court, or to any Revenue Court, or to any Collector or Magistrate, or other executive officer except such as are mentioned in clauses (b) and (c) of this Number ...
	Eight annas.
	(b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority...
	One rupee.
	(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority ...
	Two rupees.

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.		PROPER FEE.
11. Memorandum of appeal when the appeal is not* from a decree or an order having the force of a decree, and is presented—	(a)—to any Civil Court other than a High Court, or to any Revenue Court, or executive officer other than the High Court, or Chief Controlling Revenue or Executive Authority ...	Eight annas
12. Caveat.	(b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority ...	Two rupees.
13. Application under Act No. X of 1859,† section 26, or Bengal Act No. VI. of 1862,‡ section 9, or Bengal Act No. VIII. of 1869,§ section 37.	... ..	Five rupees.

\* In art. 11, col. 1, the words, "*from an order rejecting a plaint, or,*" have, by Act V. of 1908, Sch. IV., been repealed and here omitted.

† Act X. of 1859 has been repealed by the Bengal Tenancy Act (VIII. of 1885) in those portions of the Lower Provinces to which that Act extends, and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I. of 1879); in the N.-W. P. by Act XVIII. of 1873 [see now the North-Western Provinces Rent Act (XII. of 1881); and, in the Central Provinces, by the Central Provinces Tenancy Act (IX. of 1883).

‡ Ben. Act VI. of 1862 has been repealed by the Bengal Tenancy Act (VIII. of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and, in the Chota Nagpur Division (except Manbhum and the Tributary Mahals), by the Chota Nagpur Landlord and Tenant Procedure Act (Ben. Act I. of 1879).

§ Ben. Act VIII. of 1869 has been repealed by the Bengal Tenancy Act (VIII. of 1885).

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.		PROPER FEE.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.*	} ... ..	Five rupees.
15. [Repealed by Act V. of 1908, Sch. V.]		
16. [Repealed by the Probate and Administration Act (VI. of 1889), s. 18.]		
17. Complaint or memorandum of appeal in each of the following suits:—		
i. to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent, or of any Revenue Court.	} ... ..	Ten rupees.
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates:		

\* Act XXI. of 1866.

## SCHEDULE II.—(continued).

*Fixed Fees*—(continued).

NUMBER.	PROPER FEE.
iii. to obtain a declaratory decree where no consequential relief is prayed : *	
iv. to set aside an award :	
v. to set aside an adoption :	
vi. Every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.	
18. Application under section 523† of the Code of Civil Procedure.	<div data-bbox="418 925 684 942" data-label="Text">... ..</div> <div data-bbox="759 917 907 942" data-label="Text">Ten rupees.</div>
19. "Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908."‡	

\* See 8 B L. R., App., 32.

† See now the Second Schedule to Act V. of 1908 (the new Code).<sup>1</sup>

‡ This entry in the first column of art. 19 has been substituted for the original by Act V. of 1908, Sch. IV.

SCHEDULE II.—(*concluded*).*Fixed Fees*—(*concluded*).

NUMBER.	PROPER FEE.
<p>20. Every petition under the Indian Divorce Act* except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.</p>	Twenty rupees.
<p>21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.†</p>	

\* Act IV. of 1869.

† Act XV. of 1865.

## SCHEDULE III.\*

(See section 191.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

*Re Probate of the Will of  
of the Property and Credits of*

*(or Administration  
, deceased.*

I,

solemnly affirm
make oath

and say that I am the executor (*or one of the executors, or one of the next-of-kin*) of . deceased, and that I have truly set forth in Annexure A to this Affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends, and increased values since the date of the death of the said deceased, are under the value of

## ANNEXURE A.

Rs. A. P.

VALUATION OF THE MOVEABLE AND IMMOVEABLE  
PROPERTY OF . DECEASED.

Cash in the house and at the banks, household goods,  
wearing apparel, books, plate, jewels, &c. ...

*(State estimated value according to best of Executor's or  
Administrator's belief.)*

Property in Government securities transferable at the  
Public Debt Office ...

\* Sch. III. has been inserted by the Court Fees Amendment Act (XI. of 1899), s. 3, the original Sch. III. ("ENACTMENTS REPEALED") having since been repealed by Act XIV. of 1870.

## SCHEDULE III.—(continued).

## ANNEXURE A—(continued).

Rs. A. P.

*(State description and value at the price of the day ; also the interest, separately calculating it to the time of making the application.)*

Immoveable property, consisting of ...

*(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market value is estimated at, and, in the case of land, the area, the market-value, and all rents that have accrued.)*

Leasehold property ...

*(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth, and the value of such, inserting separately arrears due to the date of death, and all rents received or due since that date to the time of making the application.)*

Property in public companies ...

*(State the particulars and the value calculated at the price of the day ; also the interest, separately calculating it to the time of making the application.)*

Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money ...

*(State the amount of the whole ; also the interest, separately calculating it to the time of making the application.)*

Book debts ...

*(Other than bad.)*

Stock in trade ...



SCHEDULE III.—(concluded).

					Rs.	A.	P.
ANNEXURE A—(concluded).							
(State the estimated value, if any.)							
Other property not comprised under the foregoing heads	...	...	...	...			
(State the estimated value, if any.)							
Total							
Deduct amount shown in Annexure B not subject to duty...	...	...	...	...			
NET TOTAL							

ANNEXURE B.

SCHEDULE OF DEBTS, &c.

				Rs.	A.	P.
<i>Amount of Debts due and owing from the Deceased payable by Law out of the Estate.</i>						
Amount of funeral expenses	...	...	...			
Amount of mortgage-incumbrances	...	...	...			
Property held in trust not beneficially or with general power to confer a beneficial interest	...	...	...			
Other property not subject to duty	...	...	...			
TOTAL						

## APPENDIX TO THE COURT FEES ACT.

## NOTIFICATION REDUCING AND REMITTING COURT-FEES.

[No. 4550 dated Sep. 10, 1889 (Gazette of India, 1889, Pt. I., p. 506).]

Under section 35 of the Court Fees Act, VII. of 1870, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely:—

*A.—General for the whole of British India—*

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it, not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency, or at the termination of settlement-operations;

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts,

provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields extracted as aforesaid), which may be filed in any Court or office;

(5)\* to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the Specific Relief Act, I. of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule;

(6)† to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the Code of Civil Procedure, Act XIV. of 1882, shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India, and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under articles 6, 7, and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them.

provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice, or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount,

provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (xi) of section 10 of the Act, the fees chargeable on application for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not, at the time of application, hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, XIX. of 1883, or the Agreeculturists' Loans Act, XII. of 1884;

(13) to remit the fees chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the Indian

\* Cl. (5) is superseded by the amendment made in article 2 of Schedule I. of the Court Fees Act, 1870, by the Repealing and Amending Act (XII. of 1891), Sch. II.—See *supra*, p. 35.

† Cl. (6), as it now stands, forms the subject of a separate notification and is inserted here in this form for convenience of reference.—See Notification No. 4344-S. R., dated Oct. 6, 1893 (*Gazette of India*, 1893, I., p. 575).

Stamp Act, I. of 1879,\* for the return to that person, or to the Registration-officer who impounded it of a document impounded and sent to the Collector by a Registration-officer;

(14) to remit the fee chargeable on an application made for transfer of a stock note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August 1885;

(15) to remit the fees chargeable on the following documents, namely :—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1882,† or of a translation thereof, when the copy is given to an accused person;
- (b) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person;
- (c) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of the Judge's charge to the Jury, when the copy or translation is given under section 371 of the said Code to an accused person;
- (d) copy or translation of a judgment in a summons case, when the accused person, to whom the copy or translation is given under section 371 of the said Code, is in jail;
- (e) copy of an order of maintenance, when the copy is given, under section 490 of the said Code, to the person in whose favour the order is made, or to his guardian (if any) or to the person to whom the allowance is to be paid;
- (f) copy, furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the Jury, or of any order, deposition, or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clause, without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;
- (h) copies of all documents which any such Advocate, Pleader, or other person is required to take in connection with any such trial or investigation for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

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\* See now the Indian Stamp Act (II. of 1899), s. 42.

† Act XIV. of 1882, but see now the Code of Criminal Procedure (Act V. of 1898).

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable—

(a) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector with respect either to liability to assessment, or to the amount of an assesment under Act II. of 1866 (*an Act for imposing a tax on income derived from sources other than agriculture*) and

(b) on a copy of an order passed under section 26 of the same Act shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of a fractional share of, that part, shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

(19a)\* to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

(19b)† to direct that no court-fee shall be charged on an application for the repayment of a fine, or of any portion of a fine, the refund of which has been ordered by competent authority.

*B.—Special for the Presidency of Fort St. George only—*

(20)‡ to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III. of 1895) shall be limited to the sums specified below against each, namely:—

\* Cl. (19a) has been inserted by Notification No. 4276-S. R., dated Sep. 23, 1897.—See *Gazette of India*, 1897, Pt. I. p. 864.

† Cl. (19b) forms the subject of a separate Notification No. 3389-S R., dated Aug. 6, 1896.—See *Gazette of India*, 1896, Pt. I., p. 604, and is inserted here in this form for convenience of reference.

‡ Cls. (20) and (21) have been substituted for the pre-existing clauses by Notification No. 3449-S. R., dated Aug. 6, 1897.—See *Gazette of India*, 1897, Pt. I., p. 696.

plaint, petition for execution, or memorandum of appeal to a Collector—eight annas ;

memorandum of appeal to the Board of Revenue—two rupees ;

(21) to remit the fees chargeable (a) on copies of judgment, decrees or orders passed on claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III. of 1895), and (b) on applications filed by either party in the course of the trial of suits or appeals, or in the course of execution of decrees under the said Act ;

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under Madras Act VIII. of 1865 (*an Act to consolidate and improve the laws which define the process to be taken for the recovery of rent.*

(23) to reduce the fees chargeable in suits by Government rayats for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint ;

(23a)\* to remit the fees chargeable under the said Act on applications made by toddy-drawers and shop-keepers for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other palms.

*C.—Special for the Bombay Presidency only—*

(24) to remit the fees chargeable under the Second Schedule on agreements required by rule 75 of the rules made by the Governor of Bombay in Council under clause (i) of section 214 of the Bombay Land-revenue Code (Bombay Act V. of 1879) ;

(25)† to direct that the fee chargeable on a plaint presented under the Mamlatdars' Courts Act (Bombay Act III. of 1876) shall not exceed eight annas ;

(26) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees, or orders having the force of decrees, issued by Mamlatdars under the Mamlatdars' Courts Act (Bombay Act III. of 1876) ;

(27) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue-officer, or to the Chief Controlling Revenue-authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sirdars of note :—

\* Cl. (23a) has been inserted by Notification No. 2661-S. R., dated June 15, 1897.—See *Gazette of India*, 1897, Pt. I., p. 525.

† Cl. (25) is superseded by the amendment made in article 4 of Schedule II. of the Court Fees Act, 1870, by the Repealing and Amending Act (XII. of 1891).—See *supra*, p. 56.

District-	Number and Names of Pensioners.
Karachi . . . .	1. Jan Murad Ali, son of Jan Mehr Ali, Jokia.
Hyderabad . . . .	1. His Highness Mir Hasan Ali Khan, son of Mir Nasir Khan, Talpur.
	2. His Highness Mir Nur Muhammad Khan, son of Mir Hassan Ali Khan, Talpur.
	3. His Highness Mir Fateh Khan, son of Mir Sher Muhammad Khan, Talpur.
	1. Mir Imam Baksh Khan, son of Mir Muhammad Hassan Khan.
	2. Mir Walidad Khan, son of Mir Muhammad Hossain Khan.
	3. Mir Ahmed Khan, son of Mir Muhammad Hassan Khan.
	4. Mir Fazl Hassan Khan, son of Mir Sohrab Khan.
	5. 3rd Dehra of the late Mir Muhammad Hassan Khan.
	6. 1st Dehra of the late Mir Shrab Khan.
	7. 2nd Dehra of the late Mir Shrab Khan.
	8. Mir Najaf Ali Khan, walad Mir Ali Akbar Khan.
	9. Mir Abdul Kadir Khan, walad Mir Ali Akbar Khan.
Shikapur . . . .	10. Mir Ali Madat Khan, son of Mir Nasir Khan.
	11. Mir Ali Ahmed Khan, walad Mir Nasir Khan.
	12. Bibi Vilayat, 2nd Dehra of the late Mir Nasir Khan.
	13. Chand Bibi, 3rd Dehra of the late Mir Nasir Khan.
	14. Naz Bibi, 2nd Dehra of the late Mir Muhammad Ali Khan.
	15. Mir Mubarak Khan, walad Mir Wali Muhammad Khan.
	16. Mir Gul Hasan Khan, walad Mir Wali Muhammad Khan.
	17. Mir Khan Muhammad Khan, walad Mir Wali Muhammad Khan.
	18. Mir Yar Muhammad Khan, walad Mir Wali Muhammad Khan.
	19. Bibi Chanao, 1st Dehra of Mir Wali Muhammad Khan.
	20. Mir Ali Baksh Khan, walad Mir Fazl Muhammad Khan.
	21. Mir Amir Baksh Khan, walad Mir Fazl Muhammad Khan.

District.	Number and Names of Pensioners.
Shikarpur— <i>et al.</i>	22. Mir Gulam Murtaza Khan, walah Mir Chakar Khan.
	23. Chief Dehra of the late Mir Ali Muhammad Khan.
	24. 2nd Dehra of the late Mir Ali Muhammad Khan.

(28) to remit the fees chargeable on plaints under section 16 of the Dekkhan Agriculturists' Relief Act, XVII. of 1879, except in the District of Satara, where the said fees shall be reduced to one-half;

(29) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits for the redemption of mortgaged property when the plaintiff or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist, and when such suits are instituted within the districts of the Bombay Presidency in which the Dekkhan Agriculturists' Relief Act, XVII. of 1879, is in force except in the District of Satara, where the said fees shall be reduced to one-half;

(30) to remit the fees chargeable in respect of powers-of-attorney furnished to relatives, servants, or dependants under section 68 of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(31) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before Village-Munsifs under Chapter V. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(32) to remit the fees chargeable in respect of proceedings taken under section 19, second clause, of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(33) to remit the fees chargeable in respect of proceedings in matters relating to insolvency under Chapter IV. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879;

(34) to reduce to one half the fees chargeable in the case of suits to which Chapter II. of the Dekkhan Agriculturists' Relief Act, XVII. of 1879, applies, except suits of the description mentioned in section 3, clause (a) or clause (x) of that Act, to which an agriculturist is not a party,

provided that, when the reduced fee amounts to a fraction of an anna, the fee chargeable shall be one anna;

(35) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court in the Presidency of Bombay, or by the Sadr Court in Sind, to a pleader appointed by the Court to defend a person accused of murder;



(35a)\* to remit the fees chargeable under article 1, clauses (b) and (c), of Schedule II. on application made to a Collector or other Revenue-officer, or to any chief Controlling Revenue or Executive Authority, for permission to cut and remove junglewood for fuel or thorns for fencing from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code.†

*D.—Special for Bengal only—*

(36) to remit in the Hill Tracts of Chittagong all the fees mentioned in the First and Second Schedules ;

(37) to declare that the proper fee to be charged upon an application to deposit in any Court rent not exceeding the sum of fifteen rupees shall be as follows :—

	Proper Fee*
If the amount deposited does not exceed Rs. 2 8 ... ..	One anna.
If the amount deposited exceeds Rs. 2-8, but does not exceed Rs. 5 ... ..	Two annas.
If the amount deposited exceeds Rs. 5, but does not exceed Rs. 10 ... ..	Four annas.
If the amount deposited exceeds Rs. 10, but does not exceed Rs. 15 ... ..	Six annas.

provided that no fees shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, VIII. of 1885,

(37a)‡ to remit the fees chargeable on application by ryots in the Rajshahi district for licenses to cultivate the hemp plant ;

(37b)§ to remit the fees chargeable on application or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter X. of the Bengal Tenancy Act (VIII. of 1885) as amended by the Bengal Tenancy Act (amendment) Act, 1898 (Ben. Act III. of 1898),

provided that such applications or petitions are presented before the publication of such draft record under section 103A, sub-section (1), of the said Act ;

\* Cl. (35a) forms the subject of a separate Notification [No. 2325-S. R. Dated June 1, 1893 (see *Gazette of India* 1893, Pt. I., p. 311), and is inserted here in this form for convenience of reference.

† For the Bombay Land Revenue Code, see Bombay Act V. of 1879.

‡ Cl. (37a) forms the subject of a separate Notification [No. 1013-S. R., dated March 3, 1897, (see *Gazette of India*, 1897, Pt. I, p. 177)], and is inserted here in this form for convenience of reference.

§ Cl. (37b) forms the subject of a separate Notification [No. 321-S. R. dated Jan. 19, 1899 (see *Gazette of India*, 1899, Pt. I., p. 31)], and is inserted here in this form for convenience of reference.

*E.—Special for the North-Western Provinces only—*

(38) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement-record relating to any one village in Kumaon or Garhwal ;

(39) to remit the fees chargeable on all documents filed, exhibited, or recorded in, or received or furnished by the Court of the Special Judge appointed under the Jhansi Encumbered Estates Act, XVI. of 1882 ;

(40) to remit the fees chargeable on all documents connected with the proceedings in the Court of the Commissioner under the Jhansi Encumbered Estates Act, XVI. of 1882, except on memoranda of appeal, and on applications for revision of any decision or order of the Special Judge under Chapter VI. of the said Act ;

(41) to direct that the fee chargeable on any appeal against a decision of the Special Judge under Chapter VI. of the Jhansi Encumbered Estates Act, XVI. of 1882, shall not exceed eight annas.

*F.—Special for the N.-W. P. and Oudh only—*

(41a\*) to remit, in the N.-W. P. and Oudh, the fees chargeable on—

(a) applications presented to the Collector or any other officer empowered in this behalf by occupiers of land to cultivate the hemp plant ;

(b) applications presented to the officers aforesaid by owners or occupiers of land on which the hemp plant grows spontaneously, or by persons authorized by them in this behalf for licenses to collect and store such plant as *bhang* ;

(c) applications presented to the officers aforesaid by farmers and licensed wholesale vendors of intoxicating drugs authorized in this behalf under arrangements made with the owners and occupiers of land on which the hemp plant grows spontaneously for licenses to collect the produce as *bhang*, and to remove it for sale ;

*G.—Special for the Punjab only—*

(42) to remit the fees chargeable on copies of orders or proceedings under section 47 of the Punjab Land Revenue Act, XVII. of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with section 32 of the said Act,

provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue-officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the

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\* Cl. (41a) forms the subject of a separate Notification [No. 3380-S.R., dated Aug. 7, 1896 (see *Gazette of India*, 1896, Pt. I., p. 604)], and is inserted here in this form for convenience of reference.

Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented previous to the final confirmation of such revision ;

(43) to remit the fees chargeable on applications under section 97 of the Punjab Land Revenue Act, XVII. of 1887, made by village-officers in accordance with the provisions of rule 83 of the Rules under that Act published with the Notification\* of the Punjab Government, No. 76, dated the 1st March 1888 ;

(43a)† to remit, in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhutannis ordinarily residing outside British India—

- (i) for the recovery of debts ;
- (ii) appertaining to the custody of a woman ; or
- (iii) appertaining to inheritance.

*H.—Special for Burma only—*

(44)‡ to remit, the fees chargeable on the following documents furnished to cultivators, namely—

certified copies of extracts from settlement or supplementary survey registers containing particulars of the holdings of cultivators ;

(45)‡ to remit the fees chargeable in Upper Burma on plaints, applications, petitions, and copies which are filed, exhibited, or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi, or which are received or furnished by a Thugyi or Myothugyi :

*Explanation.*—For the purposes of this clause the expression, “ Thugyi or Myothugyi,” includes any person, however designated, who, in any part of Upper Burma, occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi ;

(46)§ to remit in Lower Burma the fees chargeable on applications presented, under section 45 of the Burma Land and Revenue Act (II. of 1876), by Revenue-officers, with a view to the realization of arrears of revenue ;

\* See *Punjab Gazette* 1888, Pt. I., pp. 279, 301.

† Cl. (43a) forms the subject of a separate Notification (No. 2807 S. R., dated June 26, 1895 (see *Gazette of India*, 1899 I., p. 604)], and is inserted here in this form for convenience of reference.

‡ These clauses have been substituted for clauses (44) to (46) by Notification No. 4724-S. R., dated Oct. 22, 1877, Pt. I., p. 956.

§ Cl. (46) forms the subject of a separate Notification [No. 2243-S. R., dated May 22, 1896 (see *Gazette of India*, 1896, Pt. I., p. 379)], and is inserted here in this form for convenience of reference.

*I.—Special for the Central Provinces only—*

(47) to direct that the fees chargeable on a petition of objection to assessment under Act XIV. of 1867 (*An Act to provide for the assessment of the Pandhari-tax in certain parts of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna :

*K.—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmere, and Coorg—*

(48)\* to direct that, whenever, upon payment of the full fee, a certificate of administration has been granted under Act XL. of 1858† (*an Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or Act XX. of 1864† (*an Act for making better provisions for the care of the persons and property of Minors in the Presidency of Bombay*), and a fresh certificate is for any reason subsequently granted in respect of the same estate, on fee shall be chargeable upon the fresh certificate so granted.

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\* K.—Cl. (48) is obsolete.

† The Minors Act (XL. of 1858) and the Minors (Bombay) Act (XX. of 1874) have been repealed by the Guardians and Wards Act (VIII. of 1890).

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*[Nothing hereinafter contained shall be deemed to have the Force of Law.]*

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THE  
INDIAN EASEMENTS ACT, 1882  
(Act V. of 1882).

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THE  
INDIAN EASEMENTS ACT, 1882  
(Act V. of 1882).<sup>\*</sup>

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY 1882.

*An Act to define and amend the Law relating to Easements  
and Licenses.*

WHEREAS it is expedient to define and amend the law relating  
to Easements and Licenses; It is hereby  
Preamble. enacted as follows:—

PRELIMINARY.

Short title. 1. This Act may be called "The  
Indian Easements Act, 1882 :"

Local extent. It extends to the territories respectively administered by the  
Governor of Madras in Council and the  
Chief Commissioners of the Central Pro-  
vinces and Coorg;

Commencement. and it shall come into force on the  
first day of July 1882.

2. Nothing herein contained shall be deemed to affect any  
law not hereby expressly repealed, or to  
Savings. derogate from—

(a) any right of the Government to regulate the collection,  
retention, and distribution of the water of rivers and streams flow-  
ing in natural channels and of natural lakes and ponds, or of the  
water flowing, collected, retained, or distributed in or by any  
channel or other work constructed at the public expense for irriga-  
tion;

(b) any customary or other right (not being a license) in or  
over immoveable property which the Government, the public, or

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\* By Act VIII. of 1891, the Indian Easements Act has been extended  
to the territories respectively administered by the Governor of Bombay in  
Council and the Lieutenant-Governor of the North-Western Provinces and  
the Chief Commissioner of Oudh.

any person may possess irrespective of other immoveable property; or

(c) any right acquired, or arising out of a relation created, before this Act comes into force.

3. Sections 26 and 27 of the Indian Limitation Act, 1877,\* and the definition of "easement" contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX. of 1871, shall, in such territories, be read as made to sections 15 and 16 of this Act.

## CHAPTER I.

### OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of certain other land not his own.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

*Explanation.*—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

#### *Illustrations.*

(a.) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house: This is an easement.

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\* Act XV. of 1877.

(b.) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his house-hold out of a spring therein : This is an easement.

(c.) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house : This is an easement.

(d.) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family guests, lodgers, and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land : These are easements.

(e.) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and repassing : This right is not an easement.

(f.) A is bound to cleanse a watercourse running through his land, and keep it free from obstruction for the benefit of B, a lower riparian owner : This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is or may be continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

### *Illustrations.*

(a.) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A : This is a continuous easement.

(b.) A right of way annexed to A's house over B's land : This is a discontinuous easement.

(c.) Rights annexed to A's land to lead water thither across B's land by an aqueduct, and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters : These are apparent easements.

(d.) A right annexed to A's house to prevent B from building on his own land : This is a non-apparent easement.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights : 7. Easements are restrictions of one or other of the following rights (namely):—

(a.) The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

(b.) The right of every owner of immovable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

*Illustrations of the Rights above referred to.*

(a.) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b.) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c.) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d.) The right of every owner of land to so much light and air as pass vertically thereto.

(e.) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

*Explanation.*—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f.) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over, or through his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g.) The right of every owner of land to collect and dispose, within his own limits, of all water under the land which does not pass in a defined

channel, and all water on its surface which does not pass in a defined channel.

(h.) The right of every owner of land that the water of every natural stream which passes by, through, or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j.) The right of every owner of land abutting on a natural stream, lake, or pond to use and consume its water for drinking, household purposes, and watering his cattle and sheep, and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

*Explanation.*—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground which flows by the operation of nature only, and in a natural and known course.

## CHAPTER II.

### THE IMPOSITION, ACQUISITION, AND TRANSFER OF EASEMENTS.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to whom he may transfer his interest in the heritage on which the liability is to be imposed.

#### *Illustrations.*

(a.) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists, or for any shorter period.

(b.) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life interest.

(c.) A, B, and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land, or on any part thereof.

(d.) A and B are lessees of the same lessor, A of a field X for a term of five years and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

**9.** Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Servient owners.

*Illustrations.*

(a.) A has in respect of his mill a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset, provided that A's supply is not thereby diminished.

(b.) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way provided that A's right of way is not thereby obstructed.

**10.** Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Lessor and mortgagor.

*Explanation.*—A security is insufficient within the meaning of the section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

**11.** No lessee or other person having a derivative interest may impose, on the property held by him as such, an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

Lessee.

**12.** An easement may be acquired by the owner of the Who may acquire easements. immoveable property for the beneficial enjoyment of which the right is created, or, on his behalf, by any person in possession of the same.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

Easements of necessity and  
*quasi* easements.

**13.** Where one person transfers or bequeaths immoveable property to another,—

(a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(b) if such an easement is apparent and continuous, and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous, and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint-property of several persons—

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or,

(f) if such an easement is apparent and continuous, and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c), and (e), are called easements of necessity.

Where immoveable property passes by operation of law, this persons from and to whom it so passes are, for the purpose of the section, to be deemed, respectively, the transferor and transferee.

*Illustrations.*

(a.) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land, or by trespassing on the land of a stranger: B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b.) A, the owner of two fields, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B: A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c.) A sells B a house with windows overlooking A's land which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect: B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d.) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C: Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B, and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f.) A is the owner of a house and adjoining land. The house has windows overlooking the land. A retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect: A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g.) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h.) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z: B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i.) A, the owner of two adjoining buildings, sells one to B, retaining the other: B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j.) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.



(k.) A grants lands to B for the purpose of building a house thereon: B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l.) Under the Land Acquisition Act, 1870,\* a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding: The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m.) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it: A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(n.) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land: B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

**14.** When a† right to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

**15.** Where the access and use of light or air to and from any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support, or other easement shall be absolute.

\* Superseded by Act I. of 1894.

† In s. 14 the italicized article a has been inserted by Act XII. of 1891.

Each of the said periods of twenty years a period ending within two years next before the suit wherein the claim to which such period relates

*Explanation I.*—Nothing is an enjoyment of this section when it has been had in pursuance with the owner or occupier of the property or claimed, and it is apparent from the agreement not been granted as an easement, or, if granted that it has been granted for a limited period condition on the fulfilment of which it is to cease.

*Explanation II.*—Nothing is an interruption of this section unless where there is an actual enjoyment by reason of an obstruction by the other than the claimant, and unless such obstruction acquiesced in for one year after the claimant and of the person making or authorizing the same.

*Explanation III.*—Suspension of enjoyment a contract between the dominant and servient interruption within the meaning of this section.

*Explanation IV.*—In the case of an easement the said period of twenty years begins when the judices perceptibly the servient heritage.

When the property over which a right of way section belongs to Government, this section shall be the words "twenty years," the words "substituted."

#### *Illustrations.*

(a.) A suit is brought in 1883 for obstruction defendant admits the obstruction, but denies the plaintiff proves that the right was peaceably an claiming title thereto, as an easement and as of right from 1st January 1862 to 1st January 1882: judgment.

(b.) In a like suit the plaintiff shows that the openly enjoyed by him for twenty years. The defendant a year of that time, the plaintiff was entitled to the heritage as lessee thereof, and enjoyed the right shall be dismissed, for the right of way has not been interrupted for twenty years.

(c.) In a like suit the plaintiff shows that the openly enjoyed by him for twenty years. The defendant plaintiff, on one occasion during the twenty years

user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

**16.** Provided that, when any land upon, over, or from which

Exclusion in favour of re- any easement has been enjoyed or deriv-  
versioner of servient heritage. ed, has been held under, or by virtue of,  
any interest for life, or any term of years exceeding three years from  
the granting thereof, the time of the enjoyment of such easement  
during the continuance of such interest or term shall be excluded  
in the computation of the said last-mentioned period of twenty  
years, in case the claim is, within three years next after the deter-  
mination of such interest or term, resisted by the person entitled, on  
such determination, to the said land.

### *Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C had a life-interest in the land; that, on C's death, B became entitled to the land, and that, within two years after C's death, he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

**17.** Easements acquired under section 15 are said to be ac-

Rights which cannot be quired by prescription, and are called  
acquired by prescription. prescriptive rights.

None of the following rights can be so acquired:—

(a) a right which would tend to the total destruction of the subject of the right or the property on which, if the acquisition were made, liability would be imposed;

(b) a right to the free passage of light or air to an open space of ground;

(c) a right to surface-water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise;

(d) a right to underground water not passing in a defined channel.

**18.** An easement may be acquired in virtue of a local custom.

Customary easements. Such easements are called customary easements.

*Illustrations.*

(a.) By the custom of a certain village every cultivator of village-land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot; He thereby acquires an easement to graze his cattle in accordance with the custom.

(b.) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

**19.** Where the dominant heritage is transferred, or devolves by act of parties, or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

*Illustration.*

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representatives so long as the lease continues.

## CHAPTER III.

## THE INCIDENTS OF EASEMENTS.

**20.** The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree (if any) by which the easement referred to was imposed.

And when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall affect such incident.

**21.** An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

*Illustrations.*

(a.) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which

is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b.) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors, and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

## 22. The dominant owner must exercise his right in the mode

Exercise of easement.	which is least onerous to the servient owner; and when the exercise of an easement can, without detriment to the dominant owner, be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.
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### *Illustrations.*

(a.) A has a right of way over B's field. A must enter the way at either end, and not at any intermediate point.

(b.) A has a right annexed to his house to cut thatching grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

## 23. Subject to the provisions of section 22, the dominant

Right to alter mode of enjoyment.	owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.
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*Exception.*—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

### *Illustrations.*

(a.) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill: He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b.) A has a right to discharge on B's land the rain-water from the eaves of A's house: This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c.) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags: He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he

does not substantially increase the amount, or injouriously change the nature, of the pollution.

(d.) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing saw-dust into it: This does not entitle A to pollute the stream by discharging into it poisonous liquor.

## 24. The dominant owner is entitled, as against the servient

owner, to do all acts necessary to secure the full enjoyment of the easement; but Right to do acts to secure enjoyment. such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

### *Illustrations.*

(a.) A has an easement to lay pipes in B's land to convey water to A's cistern: A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(b.) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered: A may enter upon B's land and alter the drain to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c.) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it: A may enter on B's land, and repair the way, or remove the tree from it.

(d.) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable: A may deviate from the way, and pass over the adjoining land of B, provided that the deviation is reasonable.

(e.) A, as owner of a certain house, has a right of way over B's field: A may remove rocks to make the way.

(f.) A has an easement of support from B's wall. The wall gives way: A may enter upon B's land, and repair the wall.

(g.) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation: A may enter upon B's land, and repair the dam.

## 25. The expenses incurred in constructing works, or making

repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner. Liability for expenses necessary for preservation of easement.

**26.** Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

**27.** The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement, or to render its exercise less convenient.

### *Illustrations.*

(a.) A, as owner of a house, has a right to lead water, and send sewage through B's land: B is not bound, as servient owner, to clear the watercourse, or scour the sewer.

(b.) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed: but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c.) A, in respect of his house, is entitled to an easement of support from B's wall: B is not bound, as servient owner, to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d.) A, in respect of his mill, is entitled to a watercourse through B's land: B must not drive stakes so as to obstruct the watercourse.

(e.) A, in respect of his house is entitled to a certain quantity of light passing over B's land: B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

**28.** With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way. (a) a right of way of any one kind does not include a right of way of any other kind :

(b) the extent of a right to the passage of light or air to a certain window, door, or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died, or the non-testamentary instrument was made :

Right to light or air acquired by grant.

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door, or other opening is that quantity of light or air which has been<sup>t</sup> accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

Prescriptive right to light or air.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose ; and

Prescriptive right to pollute air and water.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Other prescriptive rights.

**29.** The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Increase of easement.

Where an easement has been granted or bequeathed, so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased ; and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished :

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

#### *Illustrations.*

(a.) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill : He cannot thereby increase his right to divert water.



(b.) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks, by which a certain quantity of foul matter is discharged into it. A extends his works, and thereby increases the quantity discharged: He is responsible to the lower riparian owners for injury done by such increase.

(c.) A as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field, and unites it to his farm: A is not thereby entitled to take leaves to manure this field.

**30.** Where a dominant heritage is divided between two or more persons, the easement becomes Partition of dominant her- more persons, the easement becomes  
itage. annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree, or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

#### *Illustrations.*

(a.) A house, to which a right of way by a particular path is annexed, is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b.) A house, to which is annexed the right of drawing water from a well to the extent of fifty buckets a day, is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day: but the amount drawn by both must not exceed fifty buckets a day,

(c.) A, having, in respect of his house, an easement of light, divides the house into three distinct heritages: Each of these continues to have the right to have its windows unobstructed.

**31.** In the case of excessive user of an easement, the servient owner may, without prejudice to any Obstruction in case of ex- owner may, without prejudice to any  
cessive user. other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

#### *Illustration.*

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows: B cannot obstruct the excessive user.

## CHAPTER IV.

## THE DISTURBANCE OF EASEMENTS.

**32.** The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

*Illustration.*

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way; A may sue C for compensation, not for the entry, but for the obstruction.

**33.** The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement, or of any right accessory thereto, provided that the disturbance has actually caused substantial damage to the plaintiff.

*Explanation I.*—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

*Explanation II.*—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the First Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

*Explanation III.*—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

*Illustrations.*

(a.) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way: This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b.) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way : This is not substantial damage to A.

**34.** The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

**35.** Subject to the provisions of the Specific Relief Act, 1877,\* Injunction to restrain disturbance. sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(a) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this Chapter :

(b) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

**36.** Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

## CHAPTER V.

### THE EXTINCTION, SUSPENSION, AND REVIVAL OF EASEMENTS.

**37.** When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient herita ge, the easement is extinguished.

*Exception.*—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

#### *Illustrations.*

(a.) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C : B's interest in Sultanpur ends, and with it the easement is extinguished.

(b.) A, in 1860, lets Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years : B's interest in Sultanpur then ends, and with it C's easement.

(c.) A and B, tenants of C, have permanent transferable interest in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear, and his interest is sold: B's easement is extinguished.

(d.) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt: The easement is not thereby extinguished.

**38.** An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Extinction by release.

Such release can be made only in the circumstances and to the extent in and to which, the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

*Explanation I.*—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

*Explanation II.*—Mere non-user of an easement is not an implied release within the meaning of this section.

#### *Illustrations.*

(a.) A, B, and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement: This release is effectual only as against A and his legal representative.

(b.) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement: The release is ineffectual.

(c.) A, having the right to discharge his eaves-droppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly: A's easement is extinguished to the extent of the interference.

(d.) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently: The easement is impliedly released.

(e.) A, having a projecting roof by means of which he enjoys an easement to discharge eaves-droppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel, and discharges it on C's land : The easement is impliedly released.

**39.** An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction by revocation.

**40.** An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled.

Extinction on expiration of limited period or happening of dissolving condition.

**41.** An easement of necessity is extinguished when the necessity comes to an end.

Extinction on termination of necessity.

### *Illustration.*

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field : The right of way over A's land which B had acquired is extinguished.

**42.** An easement is extinguished when it becomes incapable of being at any time, and under any circumstances, beneficial to the dominant owner.

Extinction of useless easement.

**43.** Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased, and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

Extinction by permanent change in dominant heritage.

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used ; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it ; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

**44.** An easement is extinguished where the servient heritage is, by superior force, so permanently altered that the dominant owner can no longer enjoy such easement:

Extinction on permanent alteration of servient heritage by superior force.

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage, and the provisions of section 14 apply to such way.

*Illustrations.*

(a.) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently, and runs through C's land: B's easement is extinguished.

(b.) Access to a path over which A has a right of way is permanently cut off by an earthquake: A's right is extinguished.

Extinction by destruction of either heritage.

**45.** An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

*Illustration.*

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea: A's easement is extinguished.

**46.** An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Extinction by unity of ownership.

*Illustrations.*

(a.) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field, to C. Then C forecloses both mortgages, and becomes thereby absolute owner of both house and field: The right of way is extinguished.

(b.) The dominant owner acquires only part of the servient heritage: The easement is not extinguished except in the case illustrated in section 41.

(c.) The servient owner acquires the dominant heritage in connection with a third person: The easement is not extinguished.

(d.) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: The easements are not extinguished.

(e.) The joint owners of the dominant heritage jointly acquire the servient heritage: The easement is extinguished.

(f.) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages: The easement is not extinguished.

(g.) A has a right of way over B's road. B dedicates the road to the public: A's right of way is not extinguished.

**47.** A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner, and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

Provided that, if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance, that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners;

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continu-

ous, such rights shall, for the purposes of this section, be deemed to be a single easement.

*Illustration.*

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X: His rights of way over Y and Z are not extinguished.

**48.** When an easement is extinguished, the rights (if any)

Extinction of accessory accessory thereto are also extinguished. rights.

*Illustration.*

A has an easement to draw water from B's well. As accessory thereto he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47: The right of way is also extinguished.

**49.** An easement is suspended when the dominant owner

Suspension of easement. becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

**50.** The servient owner has no right to require that an ease-

Servient owner not entitled to require continuance. ment be continued; and, notwithstanding the provisions of section 25, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Where such notice has not been given, the servient owner is

Compensation for damage caused by extinguishment. entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

*Illustration.*

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the



easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage: The suit must be dismissed.

**51.** An easement extinguished under section 45 revives (a)

Revival of easements. when the destroyed heritage is, before twenty years have expired, restored by

the deposit alluvion; (b) when the destroyed heritage is a servient building, and, before twenty years have expired, such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building, and, before twenty years have expired, such building is rebuilt upon the same site, and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

*Illustration.*

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But, when A assigns the lease to C, or surrenders it to B, the right of way revives.

## CHAPTER VI.

### LICENSES.

**52.** Where one person grants to another, or to a definite

"License" defined. number of other persons, a right to do

or continue to do, in or upon the im-

moveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

**53.** A license may be granted by any one in the circum-

Who may grant license. stances, and to the extent, in and to which, he may transfer his interests in

the property affected by the license.

**54.** The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

**55.** All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

*Illustration-*

A sells the trees growing on his land to B : B is entitled to go on the land, and take away the trees.

**56.** Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee ; but, save as aforesaid, a license cannot be transferred by the licensee, or exercised by his servants or agents.

*Illustrations.*

(a.) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B : The right cannot be transferred.

(b.) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein, and remove grain therefrom.

**57.** The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

**58.** The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

**59.** When the grantor of the license transfers the property affected thereby, the transferee is not, as such, bound by the license.

License when revocable.

**60.** A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property, and such transfer is in force :

(b) the licensee, acting upon the license, has executed a work of a permanent character, and incurred expenses in the execution.

Revocation, express or implied.

**61.** The revocation of a license may be express or implied.

*Illustrations.*

(a.) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path : The license is revoked.

(b.) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C : The license is revoked.

License when deemed revoked.

**62.** A license is deemed to be revoked —

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license :

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative :

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled :

(d) where the property affected by the license is destroyed, or by superior force so permanently altered that the licensee can no longer exercise his right :

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license ;

(f) where the license is granted for specified purpose, and the purpose is attained or abandoned, or becomes impracticable ;

(g) where the license is granted to the licensee as holding a particular office, employment, or character and such office, employment, or character ceases to exist :

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee :

(1) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

**63.** Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property.

**64.** Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

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# THE INDIAN EVIDENCE ACT, 1872.

(Act No. I. of 1872.)

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 SCHEDULE :

ENACTMENTS REPEALED.

# THE INDIAN EVIDENCE ACT, (NO. I. OF 1872).\*

(RECEIVED G.-G.'S ASSENT ON THE 15TH MARCH 1872.)

WHEREAS it is expedient to consolidate, define, and amend the Law of Evidence; It is hereby enacted as follows:—

Preamble.

## PART I.

### RELEVANCY OF FACTS.

#### CHAPTER I.

##### PRELIMINARY.

1. This Act may be called “The Indian Evidence Act, 1872:”

Short title :

It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-mar-

Extent :

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\* For the Statement of Objects and Reasons, see *Gazette of India*, 1868, p. 1574; for the Draft or Preliminary Report of the Select Committee dated 31st March 1871, see *ibid.*, 1871, Pt. V., p. 273, and for the Second Report of the Select Committee dated the 30th January 1872, see *ibid.*, 1872, Pt. V., p. 34; for Discussions in Council, see *ibid.*, 1868, Supplement, pp. 1065 and 1209; *ibid.*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid.*, 1872, pp. 136 and 230.

Act I. of 1872 has been declared in force in Upper Burma generally except the Shan States (with an addition) by Act XIII. of 1893, s. 4; in the Hill District of Arakan by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3; in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), as amended by Reg. III. of 1899, s. 3; in Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s. 3; in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation (I. of 1895), s. 3; in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation (V. of 1896), s. 3; and in the Chittagong Hill-tracts by Regulation I. of 1900, s. 4; also, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), in the following Scheduled Districts, namely: The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504); and in the North-Western Provinces Tarai (see *ibid.*, 1876,

tial,\* but not to affidavits† presented to any Court or officer, nor to proceedings before an arbitrator :

Commencement of Act.

And it shall come into force on the first day of September 1872.

Repeal of enactments.

2. On and from that day, the following laws shall be repealed:—

- (1) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India :
- (2) all such rules, laws and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861,"‡ in so far as they relate to any matter herein provided for; and
- (3) the enactments mentioned in the Schedule hereto, to the extent specified in the third column of the said Schedule :

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

3. In this Act, the following words and expressions are used

Interpretation-clause. in the following senses unless a contrary intention appears from the context:—

Pt. I., 505). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

So much of this Act as relates to the General Clauses Act (I. of 1863) was repealed by the General Clauses Act (X. of 1897).

\* But see the Army Act (Stat. 44 & 45 Vict., c. 58), s. 127, which is as follows:—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any Legislature whatsoever other than the Parliament of the United Kingdom."

Act I. of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Courts.—See the Indian Marine Act (XIV. of 1887), s. 68.

† The Civil Procedure Code regulates matters to which affidavits are confined.—See Act V. of 1908, ss. 139 and 141, and rr. 1-3 of O. XIX. (First Schedule). See also the Code of Criminal Procedure (Act V. of 1898), s. 539.

‡ Stat. 24 and 25 Vict., c. 67.

"Court" includes all Judges\* and Magistrates,† and all persons, except arbitrators, legally authorized to take evidence.

"Fact." "Fact" means and includes—

(1) any thing, state of things, or relation of things capable of being perceived by the senses ;

(2) any mental condition of which any person is conscious.

### *Illustrations.*

(a.) That there are certain objects arranged in a certain order in a certain place is a fact.

(b.) That a man heard or saw something is a fact.

(c.) That a man said certain words is a fact.

(d.) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was, at a specified time, conscious of a particular sensation, is a fact.

(e.) That a man has a certain reputation is a fact.

One fact is said to be "relevant" to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The expression "facts in issue" means and includes any fact from which, either by itself, or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

*Explanation.*—Whenever, under the provisions of the Law‡ for the time being in force relating to civil procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.§

\* Cf. the Code of Civil Procedure (Act V. of 1908), s. 2 (8), the Indian Penal Code (Act XLV. of 1860), s. 19, and, as to "District Judge," the General Clauses Act (X. of 1897), s. 3 (15).

† Cf. the General Clauses Act (X. of 1897), s. 3 (31), and the Code of Criminal Procedure (Act V. of 1898), s. 3 (2).

‡ See now the Code of Civil Procedure (Act V. of 1908).

§ With reference to the settlement of issues, see the Code of Civil Procedure (Act V. of 1908), O. XIV. (First Schedule), rr. 1-7.

*Illustrations.*

A is accused of the murder of B.

At his trial the following facts may be in issue :—

that A caused B's death ;

that A intended to cause B's death ;

that A had received grave and sudden provocation from B ;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

" Document " \* means any matter expressed or described upon any substance by means of letters, figures

" Document. " or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

*Illustrations.*

A writing† is a document :

Words printed, lithographed, or photographed are documents :

A map or plan is a document :

An inscription on a metal plate or stone is a document :

A caricature is a document.

" Evidence. "

" Evidence " means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry :

such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court :

such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

" Proved. "

\* Cf. s. 29 of the Indian Penal Code (Act XLV. of 1860) and s. 3 (16) of the General Clauses Act (X. of 1897).

† Cf. definition of " written," s. 2, Act XIV. of 1882 (the definition is not given in the present Code, Act V., 1908), and " writing," s. 3 (58), the General Clauses Act (X. of 1897), and of both in s. 21, the Indian Stamp Act (I. of 1879), as modified up to 1st November 1895, as published by the Legislative Department.

See also " write " in s. 4 of the Inventions and Designs Act (V. of 1888).



A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved.”

A fact is said not to be proved when it is neither proved nor disproved.

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

“May presume.”

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

“Shall presume.”

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

“Conclusive proof.”

## CHAPTER II.

### OF THE RELEVANCY OF FACTS.

5. Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

*Explanation.*—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the Law\* for the time being in force relating to civil procedure.

#### *Illustrations.*

(a.) A is tried for the murder of B by beating him with a club with the intention of causing his death :

At A's trial, the following facts are in issue :—

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\* See now Act V. of 1908.

- A's beating B with the club ;
- A's causing B's death by such beating ;
- A's intention to cause B's death.

(b.) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. The section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.\*

**6.** Facts which, though not in issue, are so connected with a Relevancy of facts forming fact in issue as to form part of the same part of same transaction. transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

#### *Illustrations.*

(a.) A is accused of the murder of B by beating him. Whatever was said or done by A or B, or by the bystanders, at the beating, or so shortly before or after it, as to form part of the transaction, is a relevant fact.

(b.) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though A may not have been present at all of them.

(c.) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d.) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

**7.** Facts which are the occasion, cause, or effect, immediate Facts which are occasion, or otherwise of relevant facts or facts in cause, or effect of facts in issue, or which constitute the state of issue. things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

#### *Illustrations.*

(a.) The question is, whether A robbed B :

The facts, that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it to third persons, are relevant.

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\* See now Act V. of 1908.

(b.) The question is, whether A murdered B.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c.) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein, or relevant thereto, and the conduct of any person, and offence against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

*Explanation 1.*—The word “conduct” in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2.*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

#### *Illustrations.*

(a.) A is tried for the murder of B :

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b.) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact, that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c.) A is tried for the murder of B by poison :

The fact, that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d.) The question is, whether a certain document is the will of A :

The facts, that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate; that

he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(e.) A is accused of a crime :

The facts, that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f.) The question is, whether A robbed B :

The facts, that, after B was robbed, C said in A's presence—"The police are coming to look for the man who robbed B," and that, immediately afterwards, A ran away, are relevant.

(g.) The question is, whether A owes B rupees 10,000 :

The facts, that A asked C to lend him money, and that D said to C in A's presence and hearing "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts :

(h.) The question is, whether A committed a crime :

The fact, that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i.) A is accused of a crime :

The facts, that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j.) The question is, whether A was ravished :

The facts, that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or  
as corroborative under section 157.

(k.) The question is, whether A was robbed :

The fact, that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact, that he said he had been robbed without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (1), or  
as corroborative evidence under section 157.

## 9. Facts necessary to explain or introduce a fact in issue or

Facts necessary to explain relevant fact, or which support or rebut or introduce relevant facts. an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant, in so far as they are necessary for that purpose.

### *Illustrations.*

(a.) The question is, whether a given document is the will of A :

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true :

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime :

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact, that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A "I am leaving you, because B has made me a better offer : " This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, "A says you are to hide this : " B's statement is relevant as explanatory of a fact which is part of the transaction.

(f.) A is tried for a riot, and is proved to have marched at the head of a mob :

The cries of the mob are relevant as explanatory of the nature of the transaction.

# 10. Where there is reasonable ground to believe that two or

Things said or done by more persons have conspired together to commit an offence, or an actionable wrong, anything said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

## *Illustrations.*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen.

The facts, that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it.

When facts not otherwise relevant become relevant. **11. Facts not otherwise relevant are relevant—**

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.\*

## *Illustrations.*

(a.) The question is, whether A committed a crime at Calcutta on a certain day:

The fact, that, on that day, A was at Lahore, is relevant.

The fact, that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b.) The question is, whether A committed a crime:

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount, are relevant.

**12.** In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

the following facts are relevant:—

**13.** Where the question is as to the existence of any right or custom, the

(a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence :

(b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

#### *Illustration.*

The question is, whether A has a right to a fishery: A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

**14.** Facts showing the existence of any state of mind, such

Facts showing existence of state of mind, or of body or bodily feeling, as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will,

towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind, or body, or bodily feeling is in issue or relevant.

\* *Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

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\* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (1).

*\*Explanation 2.*—But, where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.†

### *Illustrations.*

(a.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article :

The fact, that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

‡ (b.) A is accused of fraudulently delivering to another person a counterfeit coin, which, at the time when he delivered it, he knew to be counterfeit :

The fact, that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact, that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit, is relevant §

(c.) A sues B for damage done by a dog of B's, which B knew to be ferocious :

The facts, that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact, that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e.) A is accused of defaming B by publishing an imputation intended to harm the reputation of B :

The fact of previous publications by A respecting B showing ill-will on the part of A towards B is relevant as proving A's intention to harm B's reputation by the particular publication in question.

The facts, that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant as showing that A did not intend to harm the reputation of B.

\* This *Explanation* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (1).

† See the Code of Criminal Procedure (Act V. of 1898), s. 31.

‡ The present *III. (b)* has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (2).

§ Compare s. 311 of the Code of Criminal Procedure (Act V. of 1898).



(f.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss :

The fact, that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant as showing that A made the representation in good faith.

(g.) A is sued by B for the price of work done by B upon a house, of which A is owner, by the order of C, a contractor.

A's defence is, that B's contract was with C :

The fact, that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h.) A is accused of the dishonest misappropriation of property which he had found, and the question is, whether, when he appropriated it, he believed in good faith that the real owner could not be found :

The fact, that public notice of the loss of the property had been given in the place where A was, is relevant as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact, that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant as showing that the fact that A knew of the notice did not disprove A's good faith.

(i.) A is charged with shooting at B with intent to kill him :

In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j.) A is charged with sending threatening letters to B :

Threatening letters previously sent by A to B may be proved as showing the intention of the letters.

(k.) The question is, whether A has been guilty of cruelty towards B, his wife :

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l.) The question is, whether A's death was caused by poison :

Statements made by A during his illness as to his symptoms are relevant facts.

(m.) The question is, what was the state of A's health at the time when an assurance on his life was effected :

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured :

The fact, that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact, that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o.) A is tried for the murder of B by intentionally shooting him dead :

The fact, that A, on other occasions, shot at B, is relevant as showing his intention to shoot B.

The fact, that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p.) A is tried for a crime :

The fact, that he said something indicating an intention to commit that particular crime, is relevant.

The fact, that he said something indicating a general disposition to commit crimes of that class, is irrelevant.

### 15. When there is a question whether an act was accidental or

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention, \* the fact, that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

#### *Illustrations.*

(a.) A is accused of burning down his house in order to obtain money for which it is insured :

The facts, that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and, after each of which fires, A received payment from a different insurance office, are relevant as tending to show that the fires were not accidental.

(b.) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive :

The question is, whether this false entry was accidental or intentional :

The facts, that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c.) A is accused of fraudulently delivering to B a counterfeit rupee :

The question is, whether the delivery of the rupee was accidental :

The facts, that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant as showing that the delivery to B was not accidental.

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\* In s. 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 2.

**16.** When there is a question whether a particular act was done, the existence of any course of business when relevant. **Existence of course of business when relevant.** done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

*Illustrations.*

(a.) The question is, whether a particular letter was despatched :

The facts, that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b.) The question is, whether a particular letter reached A : The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

**ADMISSIONS.**

**17.** An "admission" is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

**18.** Statements made by a party to the proceeding, or by an Admission—by party to agent to any such party whom the Court proceeding or his agent. regards, under the circumstances of the case, is expressly or impliedly authorized by him to make them, are admissions.

Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, by party interested in sub-ject-matter ; and who make the statements in their character of persons so interested, or

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, by person from whom interest derived.

are admissions if they are made during the continuance of the interest of the persons making the statements.

## 19. Statements made by persons whose position or liability

Admissions by persons whose position must be proved as against party to suit. it is necessary to prove as against any party to the suit are admissions if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position, or is subject to such liability.

### *Illustrations.*

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B :

A statement by C that he owed B rent is an admission, and is a relevant fact as against A if A denies that C did owe rent to B.

## 20. Statements made by persons to whom a party to the

Admissions by persons expressly referred to by party to suit. suit has expressly referred for information in reference to a matter in dispute are admissions.

### *Illustrations.*

The question is, whether a horse sold by A to B is sound :

A says to B, " Go and ask C ; C knows all about it : " C's statement is an admission.

## 21. Admissions are relevant, and may be proved as against

Proof of admissions against persons making them, and not by or on their behalf. the person who makes them, or his representative in interest ;\* but they cannot be proved by, or on behalf of, the person who makes them, or by his representative in interest, except in the following cases :—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

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\* 4 Suth. W. R. 148.

- (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

*Illustrations.*

(a.) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine; B that it is forged:

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged: But A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b.) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove those statements, because they would be admissible between third parties, if he were dead, under section 32, clause (3).

(c.) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself, and dated at Lahore on that day, and bearing the Lahore post-mark of that day:

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2)

(d.) A is accused of receiving stolen goods, knowing them to be stolen. He offers to prove that he refused to sell them below their value:

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e.) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not; and that that person did examine it, and told him it was genuine:

A may prove these facts for the reasons stated in the last-preceding illustration.

**22.** Oral admissions as to the contents of a document are

When oral admissions as to contents of documents are relevant. not relevant unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

**23.** In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

*Explanation.*—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

**24.** A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement,† threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,† and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved.

**25.** No confession made to a police-officer‡ shall be proved as against a person accused of any offence.

**26.** No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

*Explanation.* §—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or in Burma or elsewhere, unless such

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\* For prohibition of such inducements, &c., see the Code of Criminal Procedure (Act V. of 1898), s. 343.

† 9 Bom. H. C. R. 358.

‡ In s. 25, as in force in Upper Burma, the words, “who is not a Magistrate,” shall be deemed to have been inserted after “police-officer” [see the Upper Burma Laws Act (XX. of 1886), s. 7 (1) (d).] As to statement made to a police-officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898), ss. 161 and 162.

§ This *Explanation* has been added to s. 26 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 3.

headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.\*

**27.** Provided that, when any fact is deposed to as discovered

How much of information received from accused may be proved. in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

**28.** If such a confession as is referred to in section 24 is

Confession made after removal of impression caused by inducement, threat, or promise, relevant. made after the impression caused by any such inducement, threat, or promise has, in the opinion of the Court, been fully removed, it is relevant.

**29.** If such a confession is otherwise relevant, it does not become

Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c. irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession: and that evidence of it might be given against him.

**30.** When more persons than one are being tried jointly for

Consideration of proved confession affecting person making it and others jointly under trial for same offence. the same offence. and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons, as well as against the person who makes such confession.†

*Explanation.*‡—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.§

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\* Act X of 1882.—But see now the new Code of Criminal Procedure (Act V. of 1898).

† 10 Bom. H. C. R. 499; 19 Suth. W. R. (Cr.) 23.

‡ This *Explanation* has been inserted in s. 30 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 4.

§ Compare *Explanation 4* to s. 108 of the Indian Penal Code (Act XLV. of 1860).

*Illustrations.*

(a.) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession against B.

(b.) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C."

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

**31.** Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

### STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.

**32.** Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When the statement is made by a person as to the cause when it relates to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant, whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the or is made in course of ordinary course of business, and, in particular, when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.



(3) When the statement is against the pecuniary or proprietary or against interest of interest of the person making it, or when, maker; if true, it would expose him, or would have exposed him, to a criminal prosecution, or to a suit for damages.

(4) When the statement gives the opinion of any such person or gives opinion as to as to the existence of any public right or public right or custom, or custom or matter of public or general matters of general interest; interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

(5) When the statement relates to the existence of any relation- or relates to existence of ship "by blood, marriage, or adoption,"\* relationship; between persons as to whose relationship "by blood, marriage, or adoption,"\* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) When the statement relates to the existence of any relation- or is made in will or deed ship "by blood, marriage, or adoption"\* relating to family-affairs; between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family-portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to (7) When the statement is contained transaction mentioned in section 13, clause (a); in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons and expresses feelings relevant to matter in question. (8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

#### *Illustrations.*

(a) The question is, whether A was murdered by B; or

\* In s. 32 (5) and (6), the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 2.

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow :

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b.) The question is as to the date of A's birth :

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c.) The question is, whether A was in Calcutta on a given day :

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d.) The question is, whether a ship sailed from Bombay harbour on a given day :

A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e.) The question is, whether rent was paid to A for certain land :

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(f.) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(g.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day :

The fact that a letter written by him is dated on that day is relevant.

(h.) The question is, what was the cause of the wreck of a ship :

A protest made by the captain whose attendance cannot be procured is a relevant fact.

(i.) The question is, whether a given road is a public way :

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j.) The question is, what was the price of grain on a certain day in a particular market : A statement of the price, made by a deceased *bania* in the ordinary course of his business, is a relevant fact.

(k.) The question is, whether A, who is dead, was the father of B :

A statement by A that B was his son is a relevant fact.

(l.) The question is, what was the date of the birth of A :

A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact.

(*m.*) The question is, whether and when A and B were married :

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(*n.*) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character : The remarks of a crowd of spectators on these points may be proved.

**33.** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable :\*

Provided—

that the proceeding was between the same parties or their representatives in interest ;

that the adverse party in the first proceeding had the right and opportunity to cross-examine ;

that the questions in issue were substantially the same in the first as in the second proceeding.

*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

#### STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

**34.†** Entries in books of account, regularly kept in the course

Entries in books of account of business, are relevant whenever they when relevant. refer to a matter into which the Court

\* See *Queen v. Mowjan*, 20 Suth. W. R. Cr. R. 69.

† Compare s. 198 of the Indian Companies Act (VI. of 1882) and r. 17 of O. VII. (First Schedule) of the Code of Civil Procedure (Act V. of 1908) as to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act (XVIII. of 1891), *infra*.

has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

*Illustration.*

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount: The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

**35.** An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

**36.** Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

**37.** When the Court has to form an opinion as to existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

*This section also applies to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burma.\**

**38.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority

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of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

#### HOW MUCH OF A STATEMENT IS TO BE PROVED.

**30.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much, and no more, of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

#### JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT.

**40.** The existence of any judgment, order, or decree, which, by law, prevents any Court from taking cognisance of a suit, or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognisance of such suit, or to hold such trial.

Previous judgments relevant to bar a second suit or trial.

**41.** A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Relevancy of certain judgments in probate, &c., jurisdiction.

Such judgment, order, or decree, is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, "order, or decree"\* declares it to have accrued to that person;

\* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3.

has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

*Illustration.*

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount: The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

**35.** An entry in any public or other official book, register, or

Relevancy of entry in public record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relevant fact.

**36.** Statements of facts in issue or relevant facts, made in

Relevancy of statements in published maps or charts generally maps, charts, and plans. offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

**37.** When the Court has to form an opinion as to existence

Relevancy of statement as to fact of public nature contained in certain Acts or notifications. of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament, or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Government appearing in the *Gazette of India*, or in the gazette of any Local Government, or in any printed paper purporting to be the *London Gazette* or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

*This section also applies to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burma.\**

**38.** When the Court has to form an opinion as to a law of

Relevancy of statements as to any law contained in law-books. any country, any statement of such law contained in a book purporting to be printed or published under the authority

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Previous judgments relevant to bar a second suit or trial.

**41.** A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

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What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.

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Previous judgments relevant to bar a second suit or trial.

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**41.** A final judgment, order, or decree of a competent Court

Relevancy of certain judgments in probate, &c., jurisdiction.

in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

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Relevancy of entry in public record, made in performance of duty.

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**38.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority

Relevancy of statements as to any law contained in law-books.

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Previous judgments relevant to bar a second suit or trial.

**41.** A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

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The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A :

The opinions of experts on the question whether the two documents were written by the same persons or by different persons are relevant.

**46.** Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

#### *Illustrations.*

(a.) The question is, whether A was poisoned by a certain poison :

The fact, that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b.) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact, that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

**47.** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

#### *Illustration.*

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon :

The opinions of B, C, and D, on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write.

#### 48. When the Court has to form an opinion as to the existence

Opinion as to existence of of any general custom or right, the right or custom when relevant. opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

*Explanation.*—The expression, “general custom or right,” includes customs or rights common to any considerable class of persons.

#### *Illustration.*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, &c., when relevant. 49. When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts, or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

#### 50. When the Court has to form an opinion as to the re-

Opinion on relationship relationship of one person to another, the when relevant. opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact :

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,\* or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.†

\* Act IV. of 1869.

† Act XLV. of 1860.

*Illustrations.*

(a.) The question is, whether A and B were married : The fact, that they were usually received and treated by their friends as husband and wife, is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

**51.** Whenever the opinion of any living person is relevant, the grounds of opinion when the grounds on which such opinion is based are also relevant.

*Illustration.*

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

## CHARACTER WHEN RELEVANT.

**52.** In civil cases the fact, that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

**53.** In criminal proceedings, the fact that the person accused is of a good character is relevant.

**54.\*** In criminal proceedings, the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant.

*Explanation 1.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

*Explanation 2.*—A previous conviction is relevant as evidence of bad character.

**55.** In civil cases, the fact, that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

*Explanation.*—In sections 52, 53, 54, and 55, the word “character” includes both reputation and disposition; but, *except as*

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\* The present s. 54 has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 6.



*provided in section 54,\** evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition, were shown.

## PART II.—ON PROOF.

### CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable  
need not be proved.

**56.** No fact of which the Court  
will take judicial notice need be proved.

Facts of which Court must  
take judicial notice.

**57.** The Court shall take judicial  
notice of the following facts:—

(1) All laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India;

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed;

(3) Articles of War for Her Majesty's Army or Navy;

(4) the course of proceeding of Parliament, and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act† or any other law for the time being relating thereto:

*Explanation.*—The word "Parliament," in clauses (2) and (4), includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain:

(3) the Parliament of England:

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) all seals of which English Courts take judicial notice; the seals of all the Courts of British India, and of all Courts out of

\* In the *Explanation* to s. 55, the italicized words have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 7.

† Stat. 24 & 25 Vict., c. 67.

British India, established by the authority of the Governor-General\* or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction, and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being, any public office in any part of British India if the fact of their appointment to such office is notified in the *Gazette of India*, or in the official gazette of any Local Government;

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown;

(9) the divisions of time, the Geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette;

(10) the territories under the dominion of the British Crown;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons;

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it;

(13) the rule of the Road "on land or at sea."†

In all these cases,‡ and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents or reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

\* For lists of such Courts, see the Notifications printed on pp. 372 to 374 of the Western India Volume of the Lists of British Enactments in force in Native States.

† The words quoted in s. 37, para. (13), have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 5.

‡ For an additional case, see the Code of Civil Procedure (Act V. of 1908) s. 84.

**58.** No fact need be proved in any proceeding which the

Facts admitted need not be proved. parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

## CHAPTER IV.

### OF ORAL EVIDENCE.

Proof of facts by oral evidence.

**59.** All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

**60.** Oral evidence must, in all cases whatever, be direct; that is to say,—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense, or in that manner;

if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise. if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided, also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

## CHAPTER V.

## OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

**61.** The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

**62.** Primary evidence means the document itself produced for the inspection of the Court.

*Explanation 1.*—Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

*Explanation 2.*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

*Illustration.*

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

**63.** Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained;\*
  - (2) copies made from the original by mechanical processes, which, in themselves, insure the accuracy of the copy, and copies compared with such copies;
  - (3) copies made from, or compared with, the original;
  - (4) counterparts of document as against the parties who did not execute them;
  - (5) oral accounts of the contents of a document given by some person who has himself seen it.

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\* See s. 76, *infra*.

*Illustrations.*

(a.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b.) A copy compared with a copy of a letter made by a copying-machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying-machine was made from the original.

(c.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence, of the original, although the copy from which it was transcribed was compared with the original.

(d.) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

65. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily moveable;

- (e) when the original is a public document within the meaning of section 74 ;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence ;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

## 66. Secondary evidence of the contents of the documents

Rules as to notice to produce. referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, "or to his attorney or pleader,"\* such notice to produce it as is prescribed by law; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case :

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it :—

- (1) When the document to be proved is itself a notice ;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it ;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force ;

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\* In s. 66, the words quoted have been inserted by Act XVIII. of 1872, s. 6.

- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

**67.** If a document is alleged to be signed or to have been written, wholly or in part, by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of signature and handwriting of person alleged to have signed or written document produced.

**68.** If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence.

Proof of execution of document required by law to be attested.

**69.** If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Proof where no attesting witness found.

**70.** The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Admission of execution by party to attested document.

**71.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof when attesting witness denies the execution.

Proof of document not required by law to be attested.

**72.** An attested document not required by law to be attested may be proved as if it was unattested.

**73.** In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications, to finger impressions.\**

#### PUBLIC DOCUMENTS.

**74.** The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—
  - (i) of the sovereign authority,
  - (ii) of official bodies and tribunals, and
  - (iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.
2. Public records kept in British India of private documents.

**75.** All other documents are private.

**76.** Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

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\* In s. 73, the last paragraph in Italics has been added by the Indian Evidence Act (V. of 1899), s. 3 (2).



*Explanation.*—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

**77.** Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of other official documents. **78.** The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or any Local Government or any department of any Local Government—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government—

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4) The Acts of the Executive or the proceedings of the Legislature of a foreign country—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

#### PRESUMPTIONS AS TO DOCUMENTS.

**79.** The Court shall presume every document purporting to be a certificate, certified copy or other documents which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor General in Council, to be genuine:

Presumption as to genuineness of certified copies. Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer, by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

**80.** Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding, or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

that the document is genuine;

that statements as to the circumstances under which it was taken purporting to be made by the person signing it, are true; and

that such evidence, statement, or confession, was duly taken.

**81.** The Court shall presume the genuineness of every document purporting to be the *London Gazette*, or the *Gazette of India*, or the Government Gazette of any Local Government, or of any colony, depen-

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

gency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person, such document is kept substantially in the form required by law, and is produced from proper custody.

**82.** When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England, or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

**83.** The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

**84.** The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

and of every book purporting to contain reports of decisions of the Courts of such country.

**85.** The court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty, or of the Government of India, "in or for" such country to be the manner commonly in use in that country for the certification of copies of judicial records.

*An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.†*

87. The Court may presume that any book to which it may refer for information on matters of public maps, and charts, or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

89. The Court shall presume that every document called for, and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

\* In s. 86, the words quoted have been substituted for the words "resident in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 8.

† In s. 86, as amended by s. 8 of the Indian Evidence Act (1872) Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4.

90. Where any document, purporting or proved to be thirty

Presumption as to documents thirty years old. — years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

*Explanation.*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

#### *Illustrations.*

(a.) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it: The custody is proper.

(b.) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession: The custody is proper.

(c.) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody: The custody is proper.

## CHAPTER VI.

### OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

91. When the terms of a contract, or of a grant, or of any

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document. — other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence\* shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its

\* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed.—See the Code of Criminal Procedure (Act V. of 1898), s. 533.

contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

*Exception 1.*—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

*Exception 2.*—Wills “admitted to probate in British India”\* may be proved by the probate.

*Explanation 1.*—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

*Explanation 2.*—Where there are more originals than one, one original only need be proved.

*Explanation 3.*—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

#### *Illustrations.*

(a.) If a contract be contained in several letters, all the letters in which it is contained must be proved.

(b.) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c.) If a bill of exchange is drawn in a set of three, one only need be proved.

(d.) A contracts in writing with B for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo : The evidence is admissible.

(e.) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

**92.** When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no

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\* These words in s. 91, *Exception 2*, have been substituted for the words “under the Indian Succession Act” by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 7.

evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from, its terms :

*Proviso 1.*—Any facts may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto ; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want of\* failure of consideration, or mistake in fact or law.

*Proviso 2.*—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

*Proviso 3.*—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

*Proviso 4.*—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

*Proviso 5.*—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved : Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

*Proviso 6.*—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

### *Illustrations.*

(a.) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact, that that particular ship was orally excepted from the policy, cannot be proved.

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\* In s. 92, *Prov. 1*, the italicized word "or" has been substituted for the word "of" by s. 8 of the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872).

(b.) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact, that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.

(c.) An estate called "the Rampur Tea Estate" is sold by a deed which contains a map of the property sold. The fact, that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(d.) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value: This fact may be proved.

(e.) A institutes a suit against B for the specific performance of a contract, and also pays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake: A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f.) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price: A may show that the goods were supplied on credit for a term still unexpired.

(g.) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words—"Bought of A a horse for Rs. 500:" B may prove the verbal warranty.

(h.) A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month:" A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly-stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board: A may not prove that board was included in the terms verbally.

(i.) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt, and does not send the money: In a suit for the amount, A may prove this.

(j.) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it: A may show the circumstances under which it was delivered.

### 93. When the language used in a document is, on its face,

Exclusion of evidence to explain or amend ambiguous document.      ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.

#### *Illustrations.*

(a.) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500:"

Evidence cannot be given to show which price was to be given.

(b.) A deed contains blanks: Evidence cannot be given of facts which would show how they were meant to be filled.



**94.** When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

Exclusion of evidence against application of document to existing facts.

*Illustration.*

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas: Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place, and of a different size.

**95.** When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Evidence as to document unmeaning in reference to existing facts.

*Illustration.*

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed:

These facts may be proved to show that the deed related to the house at Howrah.

**96.** When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Evidence as to application of language which can apply to one only of several persons.

*Illustrations.*

(a.) A agrees to sell to B, for Rs. 1,000, "my white horse." A has two white horses: Evidence may be given of facts which show which of them was meant.

(b.) A agrees to accompany B to Haidrabad: Evidence may be given of facts showing whether Haidrabad in the Deccan or Haidrabad in Sindh was meant.

**97.** When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

*Illustration.*

A agrees to sell to B "my land at X in the occupation of Y." A has land at X, but not in the occupation of Y; and he has land in the occupation of Y, but it is not at X: Evidence may be given of facts showing which he meant to sell.

**98.** Evidence may be given to show the meaning of illegible

Evidence as to meaning of illegible character, &c. or not commonly intelligible characters of foreign, obsolete, technical, local, and provincial expressions of abbreviations, and of words used in a peculiar sense.

*Illustration.*

A, a sculptor, agrees to sell to B 'all my mods.' A has both models and modelling tools: Evidence may be given to show which he meant to sell.

**99.** Persons, who are not parties to a document or their

Who may give evidence of agreement varying terms of document. representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

*Illustration.*

A and B make a contract in writing that B shall sell A certain cotton to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A: This could not be shown as between A and B, but it might be shown by C if it affected his interests.

**100.** Nothing in this chapter contained shall be taken to

Saving of provisions of Indian Succession Act relating to wills. affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

## PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

### CHAPTER VII.—OF THE BURDEN OF PROOF.

**101.** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Burden of proof.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

*Illustrations.*

(a.) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed :

A must prove that B has committed the crime.

(b.) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true :

A must prove the existence of those facts.

**102.** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

*Illustrations.*

(a.) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession :

Therefore the burden of proof is on A.

(b.) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed, and the fraud is not proved :

Therefore the burden of proof is on B.

**103.** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

*Illustration.*

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C : A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere : He must prove it.

**104.** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Burden of proving fact to be proved to make evidence admissible.

*Illustrations.*

(a.) A wishes to prove a dying declaration by B : A must prove B's death.

(b.) A wishes to prove, by secondary evidence, the contents of a lost document :

A must prove that the document has been lost.

**105.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

*Illustrations.*

(a.) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act :

The burden of proof is on A.

(b.) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control :

The burden of proof is on A.

(c.) Section 325 of the Indian Penal Code provides that, whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325 :

The burden of proving the circumstances bringing the case under section 335 lies on A.

**106.** When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations.*

(a.) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b.) A is charged with travelling on a railway without a ticket : The burden of proving that he had a ticket is on him.

**107.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving death of person known to have been alive within thirty years.

**108.** "Provided that,"\* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *shifted to*† the person who affirms it.

**109.** When the question is, whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

**110.** When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

**111.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

#### *Illustrations.*

(a.) The good faith of a sale by a client to an attorney is in question in a suit brought by the client : The burden of proving the good faith of the transaction is on the attorney.

(b.) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son : The burden of proving the good faith of the transaction is on the father.

**112.** The fact, that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining

\* In s. 108, the words quoted have been inserted by s. 9, Act XVIII. 1872.

† In s. 108, the italicised words have been substituted for the word "on," by s. 9, Act XVIII., 1872.

unmarried, shall be conclusive proof that he is the legitimate son of that man unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

**113.** A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,\* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

**114.** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

#### *Illustrations.*

The Court may presume—

(a.) that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession ;

(b.) that an accomplice is unworthy of credit unless he is corroborated in material particulars ;

(c.) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration ;

(d.) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence ;

(e.) that judicial and official acts have been regularly performed ;

(f.) that the common course of business has been followed in particular cases ;

(g.) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

(h.) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him ;

(i.) that, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it—

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\* See, for example, *Gazette of India*, Jan. 4, 1873, Pt. I., p. 2.

as to illustration (a.)—a shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business ;

as to illustration (b.)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself ;

as to illustration (b.)—a crime is committed by several persons : A, B, and C, three of the criminals, are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable ;

as to illustration (c.)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence ;

as to illustration (d.)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course ;

as to illustration (e.)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances ;

as to illustration (f.)—the question is, whether a letter was received ; it is shown to have been posted, but the usual course of the post was interrupted by disturbances ;

as to illustration (g.)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family ;

as to illustration (h.)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

as to illustration (i.)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

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## CHAPTER VIII.—ESTOPPEL.

**115.** When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

*Illustration.*

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title: He must not be allowed to prove his want of title.

**116.** No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person and of license of person in who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

**117.** No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill, or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

*Explanation 1.*—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

*Explanation 2.*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

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## CHAPTER IX.—OF WITNESSES.

**118.** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.



*Explanation.*—A lunatic is not incompetent to testify unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

**119.** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing, or by sign; but such writing must be written, and the signs made, in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses.

**120.** In all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit and their wives or husbands.

Husband or wife of person under criminal trial.

**121.** No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and Magistrates.

### *Illustrations.*

(a.) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate: B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b.) A is accused before the Court of Session of having given false evidence before B, a Magistrate: B cannot be asked what A said except upon the special order of the superior Court.

(c.) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge: B may be examined as to what occurred.

**122.** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure.

125.\* No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

*Explanation.*—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

126. No barrister, attorney, pleader, or vakil shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course, and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal‡ purpose;

\* Substituted, by Act III. of 1887, for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second in Command of Military Police in Burma.—See the Burma Military Police Act (XV. of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

(2) any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,\* attorney, or vakil was or was not directed to such fact by or on behalf of his client.

*Explanation.*—The obligation stated in this section continues after the employment has ceased.

### *Illustrations.*

(a.) A, a client, says to B, an attorney, "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b.) A, a client, says to B, an attorney, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c.) A being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment:

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

**127.** The provisions of section 126 shall apply to inter-

Section 126 to apply to preters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

**128.** If any party to a suit gives evidence therein at his own

Privilege not waived by instance or otherwise, he shall not be volunteering evidence. deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader,\* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, pleader,\*

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\* In ss. 126 and 128, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 10.

attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

**129.** No one shall be compelled to disclose to the Court Confidential communications with legal advisers. any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

**130.** No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

**131.** No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession unless such last mentioned person consents to their production.

**132.** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

**133.** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

**134.** No particular number of witnesses shall, in any case, be required for the proof of any fact.

Number of witnesses.

## CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

**135.** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

**136.** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

### *Illustrations.*

(a.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under s. 32 :

The fact, that the person is dead, must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b.) It is proposed to prove, by a copy, the contents of a document said to be lost :

The fact, that the original is lost, must be proved, by the person proposing to produce the copy, before the copy is produced.

(c.) A is accused of receiving stolen property knowing it to have been stolen :

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(d.) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue : The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

**137.** The examination of a witness by the party who calls him shall be called his examination-in-chief.

**Cross-examination.**

The examination of a witness by the adverse party shall be called his cross-examination.

The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

**138.** Witnesses shall be first examined-in-chief; then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

**Order of examinations.**

**Direction of re-examination.**

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination ; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

**139.** A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

**Cross-examination of person called to produce a document.**

**Witnesses to character.**

**140.** Witnesses to character may be cross-examined and re-examined.

**141.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions.

**142.** Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

**143.** Leading questions may be asked in cross-examination.

When they may be asked.

**144.** Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document; and, if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

*Explanation.*—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

*Illustration.*

The question is, whether A assaulted B.

C deposes that he heard A say to D, "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing,\* his attention must, before the writing

\* This applies to police-diaries.—See s. 172, Act V. of 1898.

can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

**146.** When a witness is cross-examined, he may, in addition

Questions lawful in cross-examination. to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him, or might expose, or tend, directly or indirectly, to expose, him to a penalty or forfeiture.

**147.** If any such question relates to a matter relevant to

When witness to be compelled to answer. the suit or proceeding, the provisions of section 132 shall apply thereto.

**148.** If any such question relates to a matter not relevant

Court to decide when question shall be asked, and when witness compelled to answer. to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character, the Court

shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

(1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(2) Such questions are improper if the imputation which they convey relates to matter so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies :

(3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence :

(4) The Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.



**149.** No such question as is referred to in section 148 ought to be asked unless the person asking has reasonable grounds for thinking that the imputation which it conveys is well-founded.

*Illustrations.*

(a.) A barrister is instructed by an attorney or vakil that an important witness is a dakait: This is a reasonable ground for asking the witness whether he is a dakait.

(b.) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement: This is a reasonable ground for asking the witness whether he is a dakait.

(c.) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait: There are here no reasonable grounds for the question.

(d.) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers: This may be a reasonable ground for asking him if he is a dakait.

**150.** If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney is subject in the exercise of his profession.

**151.** The Court may forbid any questions or inquiries which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

**152.** The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

**153.** When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, Exclusion of evidence to contradict answers to questions testing veracity.

no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

*Exception 1.*—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

*Exception 2.*—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

### *Illustrations.*

(a.) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim:

The evidence is inadmissible.

(b.) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty:

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta:

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases, the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence.

He denies it: He may be contradicted on the ground that the question tends to impeach his impartiality.

**154.** The Court may, in its discretion, permit the person

Question by party to his own witness. who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

**155.** The credit of a witness may be impeached in the following

Impeaching credit of witness. ways by the adverse party, or, with the consent of the Court, by the party who calls him:—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted\* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

*Explanation.*—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

#### *Illustrations.*

(a.) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B :

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A, or in his presence :

The evidence is admissible.

156. When a witness, whom it is intended to corroborate,

Questions tending to corroborate evidence of relevant fact admissible. gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

\* The word "accepted" has been substituted for the word "had" by Act XVIII. of 1872, s. 11.

*Illustration.*

A<sup>1</sup>, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed :

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

**157.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

**158.** Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

**159.** A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document : Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

**160.** A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves if he is sure that the facts were correctly recorded in the document.

Testimony to facts stated in document mentioned in section 159.

*Illustration.*

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

**161.\*** Any writing referred to under the provisions of the Right of adverse party as to writing used to refresh memory. two last-preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

**162.** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

**163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

**164.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party, or the order of the Court.

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\* As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1893), s. 172.

*Illustration.*

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped : He cannot do so.

**165.** The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; any may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, not, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question :

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved :

Provided, also, that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document except in the cases hereinbefore excepted.

**166.** In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

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## CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

**167.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case if it shall appear to the Court before

No new trial for improper admission or rejection of evidence.

which such objection is raised. that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

## SCHEDULE.

### ENACTMENTS REPEALED.

(See section 2.)

Number and year.	Title.	Extent of repeal.
<i>Stat. 26 Geo. III., cap. 57.</i>	<i>For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act made in the twenty-fourth year of the reign of His present Majesty (entitled "An Act for the Better Regulation and Management of the Affairs of the East India Company, and of the British Possessions in India, and for establishing a Court of Judicature for the more Speedy and Effectual Trial of Persons accused of Offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India.</i>	<i>Section 38, so far as it relates to Courts of Justice in the East Indies.</i>
<i>Stat. 14 &amp; 15 Vict., cap. 99.</i>	<i>To amend the Law of Evidence.</i>	<i>Section 11, and so much of section 19 as relates to British India.</i>

SCHEDULE—(*contd.*).  
ENACTMENTS REPEALED—(*contd.*).  
(*See section 2.*)

Number and year.	Title.	Extent of repeal.
Act XV. of 1852.	To amend the Law of Evidence.	So much as has not been heretofore repealed.
Act XIX. of 1853.	To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency.	Section 19.
Act II. of 1855.	For the further improvement of the Law of Evidence.	So much as has not been heretofore repealed.
Act XXV. of 1861.	For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter.	Section 237.
* * * *	* * * *	* * * *

\* The entry relating to ss. 7 and 8 of the General Clauses Act (I. of 1868) has been repealed by the General Clauses Act (X. of 1897).



## ACT NO. XVIII. OF 1891.

## The Bankers' Books Evidence Act, 1891.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 1st October 1891.)

*An Act to amend the Law of Evidence with respect to Bankers' Books.*

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:—

Title, extent, and commencement.

1. (1) This Act may be called "The Bankers' Books Evidence Act, 1891."

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1)\* "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by An Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent.

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers;

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

(c)† any Post Office Savings Bank or Money-order Office:

(3) "bankers' books" include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a bank:

\* The definition of "company" has been substituted for the original one by the Bankers' Books Evidence Act (XII. of 1900), s. 2.

† To sub-s. (2) of s. 2, cl. (c) has been added by s. 2 of the Bankers' Books Evidence Act (I. of 1893).

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration:

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken:

(6) "Judge" means a Judge of a High Court:

(7) "trial" means any hearing before the Court at which evidence is taken; and

(8) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The Local Government may, from time to time, by notification in the official Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings, be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded unless by order of the Court or a Judge made for special cause.

6. (1) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and

take copy of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed unless the Court or Judge shall otherwise direct.

(3) The bank may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial, or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

**7. (1)** The costs of any application to the Court or a Judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act, shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

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# ACT NO. I. OF 1893 :\*

## The Bankers' Books Evidence Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 20th January 1893.)

*An Act to extend the Provisions of the Bankers' Books Evidence Act, 1891,† to the Books of Post Office Savings Banks and Money Order Offices.*

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of the Savings Banks and Money Order Offices of the Post Office; It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called "The Bankers' Books Evidence Act, 1893;" and

(2) It shall come into force at once.

Addition to definition of "bank" and "banker" in section 2, sub-section (2), of Act XVIII. of 1891.

2. After clause (b) of sub-section (2) of section 2 of the said Bankers' Books Evidence Act, 1891,† the following clause shall be added, namely :—

[ *Vide supra*, p. 77. ]

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1893, Pt. V., p. 15; for Proceedings in Council, see *ibid* Pt. VI., pp. 12 and 27.

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† Act XVIII. of 1891.—See p. 77, *Supra*.

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# ACT XIII. OF 1855.

## The Indian Fatal Accidents Act, 1855.\*

RECEIVED THE G.-G.'s ASSENT ON THE 27TH MARCH 1855.

*An Act to provide Compensation to Families for Loss occasioned by the Death of a Person caused by Actionable, Wrong.*

WHEREAS no action or suit is now maintainable in any Court against a person who, by his wrongful act, neglect, or default, may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him; It is enacted as follows:—

Preamble.

1. Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong.

And it is enacted further that every such action or suit shall be for the benefit of the wife, husband, parent, and child, if any, of the

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\* This is the short title given to this Act by the Indian Short Titles Act (XIV. of 1897).

Based on the Fatal Accidents Act, 1846 (9 & 10 Vict., c. 93).

Act XIII. of 1855 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States), by the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886); in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), s. 2 and sch.; in the Arakan Hill District, by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; and in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

person whose death shall have been so caused, and shall be brought by, and in the name of, the executor, administrator, or representative of the person deceased;

and in every such action the Court may give such damages\* as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them, in such shares as the Court, by its judgment or decree, shall direct.

2. Provided always that not more than one action or suit shall be brought for, and in respect of, the same subject-matter of complaint†: pro-

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

- (1) Sindh (see *Gazette of India*, 1880, Pt. I., p. 672):
- (2) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I., p. 74):
- (3) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 594):
- (4) The scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383):
- (5) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):
- (6) The Scheduled Districts of the Punjab (see *Gazette of India*, 1881, Pt. I., p. 483):
- (7) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I., p. 771):
- (8) The District of Sylhet (see *Gazette of India*, 1879, Pt. I., p. 631):
- (9) The rest of Assam (except the North Lushai Hills (see *Gazette of India*, 1897, Pt. I., p. 299):
- (10) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I., p. 1059).

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

- (1) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 606):
- (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505).

\* As to the measure of damages under this Act, see *Vinayak Reghunath v. G. I. P. Ry. Co.*, 7 Bom., O. C. J., 113; *Ratanbai v. G. I. P. Ry.*, *ib.* 120: s. c., on appeal, 8 *ib.* 130.

† In s. 2 the words "and that every such action shall be brought within twelve calendar months after the death of such deceased person," have here been repealed by the Indian Limitation Act (IX. of 1871). For limitation, see now the Limitation Act (XV. of 1877), Sch. II., No. 21.

vided that, in any such action or suit, the executor, administrator,

Claim for loss to estate may or representative of the deceased may be added.

insert a claim for, and recover any pecuniary loss to, the estate of the deceased occasioned by such wrongful act, neglect, or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased.

3. The plaint in any such action or suit shall give a full

Plaintiff shall deliver particular of the person or persons for particulars, &c. whom, or on whose behalf, such action

or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

4. The following words and expressions are intended to have

Interpretation-clause. the meaning hereby assigned to them

respectively, so far as such meanings are

not excluded by the context or by the nature of the subject-matter ;

that is to say, words denoting the singular number are to be under-

stood to apply also to a plurality of persons or things, and words

denoting the masculine gender are to be understood to apply also

to persons of the feminine gender ; and the word " person " shall

apply to bodies politic and corporate ; and the word " parent " shall

include father and mother\* and grand-father and grand-mother ; and

the word " child " shall include son† and daughter and grandson

and grand-daughter, and step-son and step-daughter.

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\* Step-father and step-mother are designedly omitted.

† As to adopted sons, see 7 Bom., O. C. J., 113.





# THE GENERAL CLAUSES ACT, 1897.

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# ACT NO. X. OF 1897.\*

## The General Clauses Act, 1897.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received His Excellency's assent on the 11th March 1897.*

*An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.†*

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868†; and 1887†; It is hereby enacted as follows:—

### *Preliminary.*

Short title and commencement.

1. (1) This Act may be called the General Clauses Act, 1897; and

(2) It shall come into force at once.

2. [*Repealed by Act I. of 1903.*]

### *General Definitions.*

3. In this Act, and in all Acts of the Governor-General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "abet," with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code:

"Abet."

\* For Statement of Objects and Reasons, see *Gazette of India*, 1897, Pt. V., p. 38; for Report of the Select Committee, see *ibid*, p. 77; and for Proceedings in Council, see *ibid*, Pt. VI., pp. 35, 40, 56, and 76.

Act X. of 1897 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See the Fifth Schedule.

† Acts I. of 1868 and I. of 1887, respectively.

- (2)\* "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:
- "Act."
- (3)† "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:
- "Affidavit."
- (4)‡ "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland:
- "Barrister."
- (5) "Bengal Act"§ shall mean an Act made by the Lieutenant-Governor of Bengal in Council under "the Indian Councils Act, 1861, or" the Indian Councils Acts, 1861|| and 1892|| :
- "Bengal Act."
- (6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under "the Indian Councils Act, 1861, or" the Indian Councils Acts, 1861¶ and 1892¶ :
- "Bombay Act."
- (7)\*\* "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through

\* Compare the Indian Penal Code (Act XLV. of 1860) and the Madras General Clauses Act (Mad. Act III. of 1891).

† Compare the definitions of "Oath" and "Swear" in sub-s. (36) and (55), respectively, *infra*. As to affidavits in civil proceedings, see Ch. XVI. of the Code of Civil Procedure (Act XIV. of 1882); as to criminal proceedings, see Code of Criminal Procedure (Act V. of 1898).

‡ Compare the Indian High Courts Act, 1861, (24 & 25 Vict., c. 104), s. 19.

§ Since the passing of this Act, the Punjab and Burma Legislative Councils have been constituted, and their Acts may by analogy be referred to as "Punjab" and "Burma Acts."

|| Stats. 24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14, respectively. The words quoted have been inserted by Act I. of 1903.

¶ Stats. 24 & 25, Vict., c. 67, and 55 & 56 Vict., c. 14, respectively. The words quoted have been inserted by Act I. of 1903.

\*\* Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (4). For definition of "India" see *infra*, sub-s. (27).

the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India :

- (8)\* “British possession” shall mean any part of Her Majesty’s dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession :

- (8a)† “Burma Act” shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892 :

- (9) “Chapter” shall mean a Chapter of the Act or Regulation in which the word occurs :

- (10)‡ “Collector” shall mean, in a Presidency-town, the Collector of Calcutta, Madras, or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district :

- (11)§ “Colony” shall mean any part of Her Majesty’s dominions, exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

\* Compare the Interpretation Act, 1889 (52 and 53 Vict., c. 63), s. 18 (2).

† Clause (8a) has been added by Act I. of 1903.

‡ Compare the Bombay General Clauses Act (Bom. Act III. of 1886), s. 3 (12), and the N.-W. P. and Oudh General Clauses Act (N.-W. P. and Oudh Act I. of 1887), s. 2 (12).

§ Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (3).

(12) "commencement,"\* used with reference to an Act or Regulation, shall mean  
 "Commencement." the day on which the Act  
 or Regulation comes into force :

(13)† "Commissioner" shall mean the chief officer in charge  
 "Commissioner." of the revenue administra-  
 tion of a division :

(14)‡ "consular officer" shall include consul-general, consul, vice-consul, consular  
 "Consular officer." agent, pro-consul, and  
 any person for the time being authorized to perform  
 the duties of consul-general, consul, vice-consul, or  
 consular agent :

(15)§ "District Judge" shall mean the Judge of a principal  
 "District Judge." Civil Court of original  
 jurisdiction, but shall not  
 include a High Court in the exercise of its ordinary  
 or extraordinary original civil jurisdiction :

(16)|| "document" shall include any matter written, ex-  
 "Document." pressed, or described  
 upon any substance by  
 means of letters, figures, or marks or by more than  
 one of those means, which is intended to be used, or  
 which may be used, for the purpose of recording  
 that matter :

(17) "enactment" shall include a Regulation (as herein-  
 "Enactment." after defined) and any  
 Regulation of the Bengal,  
 Madras, or Bombay Code, and shall also include any  
 provision contained in any Act or in any such  
 Regulation as aforesaid ;

\* For rules determining when any given Act is to come into force, see s. 5, *infra*.

† Compare the N.-W. P. and Oudh General Clauses Act (N.-W. P. and Oudh Act I. of 1887).

‡ Compare the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36), s. 3.

§ As to definition of "High Court," see sub-s. (24) *infra*.

|| Compare the Indian Evidence Act (I. of 1872). As to definition of "written," see sub-s. (58), *infra*.

- (18) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father:  
 "Father."
- (19)\* "financial year" shall mean the year commencing on the first day of April:  
 "Financial year."
- (20)† a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not:  
 "Good faith."
- (21)‡ "Government" or "the Government" shall include the Local Government as well as the Government of India:  
 "Government."
- (22) "Government of India" shall mean the Governor-General in Council or, during the absence of the Governor-General from his Council, the President in Council, or the Governor-General alone as regards the powers which may be lawfully exercised by them or him respectively:  
 "Government of India."
- (23)§ "Her Majesty" or "the Queen" shall include her successors:  
 "Her Majesty" or "the Queen."
- (24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates:  
 "High Court."

\* Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 29.

† Compare the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 90, and the Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 62.

As to discussion in Council regarding definition of "good faith," see *Gazette of India*, 1897, Pt. VI., pp. 56 to 62 and 76 to 79.

‡ Compare the Code of Civil Procedure (Act XIV. of 1882), s. 2. As to definition of Local Government, see sub-s. (29) *infra*.

§ Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 30, as to references to the reigning Sovereign.

As to Her Majesty's title as Empress of India, see the Royal Titles Act, 1876 (39 Vict., c. 10.)

- (25) "immoveable property" shall include land, benefits  
 "Immoveable property." to arise out of land, and  
 things attached to the  
 earth, or permanently fastened to anything attached to  
 the earth : \*
- (26) "imprisonment" shall mean imprisonment of either  
 "Imprisonment." description as defined in  
 the Indian Penal Code :
- (27)† "India" shall mean British India, together with any  
 "India." territories of any Native  
 Prince or Chief under the  
 suzerainty of Her Majesty exercised through the  
 Governor-General of India, or through any Governor  
 or other officer subordinate to the Governor-General  
 of India :
- (28)‡ "local authority" shall mean a municipal committee,  
 "Local authority." district board, body of  
 port commissioners or  
 or other authority legally entitled to, or entrusted by  
 the Government with, the control or management of  
 a municipal or local fund :
- (29)§ "Local Government" shall mean the person author-  
 "Local Government." ized by law to administer  
 executive Government in  
 the part of British India in which the Act or Regu-  
 lation containing the expression operates, and shall  
 include a Chief Commissioner :
- (30) "Madras Act" shall mean an Act made by the Gover-  
 "Madras Act." nor of Fort St. George  
 in Council under "the

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\* As to growing crops and timber so far as they are affected by the Indian Registration Act (III. of 1877), see s. 3 of that Act.

† Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (5).

‡ Compare the Local Authorities Loan Act (XI. of 1879).

§ There are at present eleven Local Governments in British India; namely :—The Governors of Madras and Bombay in Council, the Lieutenant-Governors of Bengal, the N.-W. P. and Oudh, the Punjab, and Burma; and the Chief Commissioners of the Central Provinces, Assam, Ajmere-Marwara, Coorg, and British Baluchistan. The Commissioner in Sindh exercises by delegation certain powers of a Local Government.—See Act V. of 1868 (Commissioner in Sindh).

Indian Councils Act, 1861, or" the Indian Councils Act, 1861\* and 1892 :\*

(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force:†

(32) ‡ "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

(33) "month" shall mean a month reckoned according to the British calendar:

(34) "moveable property" § shall mean property of every description, except immoveable property:

(35) "North-Western Provinces and Oudh Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh in Council under "the Indian Councils Act, 1861, or" the Indian Councils Acts, 1861\* and 1892:\*

(36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

(37) || "offence" shall mean any Act or omission made punishable by any law for the time being in force:

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\* Stats. 24 & 25 Vict. c., 67, and 55 & 56 Vict., c. 14, respectively. The words quoted have been inserted by Act I. of 1903.

† The Code now in force is Act V. of 1898.

‡ See s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

§ For a comprehensive definition of the word "property," see s. 168 of the Bankruptcy Act, 1883 (46 and 47 Vict., c. 52).

|| See a similar definition in s. 4 (o) of the Code of Criminal Procedure (Act V. of 1898).



(38) "Part" shall mean a Part of the Act or Regulation in which the word occurs:  
 "Part."

(39) "person" shall include any company or association or body of individuals, whether incorporated or not:  
 "Person."

"Political Agent." (40)\* "Political Agent" shall include—

(a) the principal officer representing the Government in any territory or place beyond the limits of British India, and

(b) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition:

(41)† "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be:

(42)‡ "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:  
 "Privy Council."

(43)§ "Province" shall mean the territories for the time being administered by any Local Government:  
 "Province."

\* See s. 3 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879).

† See s. 4 (h) of the repealed Code of Criminal Procedure (Act X. of 1882), and compare s. 3 (25) of the Madras General Clauses Act (Mad. Act I. of 1891).

‡ Compare s. 12 (5) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

§ Compare s. 4 (g) of the repealed Code of Criminal Procedure (Act X. of 1882).

(44)\* "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code:  
 "Public nuisance."

(44a)† "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892 :  
 "Punjab Act."

(45)‡ "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents :  
 "Registered."

(46) "Regulation" shall mean a Regulation made under the Government of India. Act, 1870:§  
 "Regulation."

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment :||  
 "Rule."

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs :  
 "Schedule."

(49) "Schedule District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874:¶  
 "Schedule District."

(50) "section" shall mean a section of the Act or Regulation in which the word occurs :  
 "Section."

\* As to procedure in the case of public nuisances, see the Code of Criminal Procedure (Act V. of 1898), Ch. X.

† Cl. (44a) has been inserted by Act I. of 1903.

‡ Compare the Madras General Clauses Act (Mad. Act I. of 1891), s. 3 (11). As to the law now in force, see the Indian Registration Act (III. of 1877).

§ Stat. 33 Vict., c. 3.

|| The provisions of ss. 20 to 24, *infra*, apply to rules defined in this sub-section.

¶ Act XIV. of 1874.

(51)\* "ship" shall include every description of vessel used in navigation not exclusively propelled by oars:  
"Ship."

(52)† "sign," with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions:

(53) "son," in the case of any one whose personal law permits adoption, shall include an adopted son:  
"Son."

(54) "sub-section" shall mean, a sub-section of the section in which the word occurs:  
"Sub-section."

(55)‡ "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

(55a) "United Provinces Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892:  
"United Provinces Act."

(56)§ "vessel" shall include any ship or boat or any other description of vessel used in navigation:  
"Vessel."

\* Compare s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

† See also definition of "writing" in sub-s. (58), *infra*.

‡ See also definition of "affidavit" and "oath" *supra*, sub-ss. (3) and (36), respectively; and as to oaths, see the Indian Oaths Act (XI. of 1873).

§ Compare s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60). This definition supplements the definition of ship in sub-s. (51), *supra*. See also definition of vessel in s. 48 of the Indian Penal Code.

(57)\* "will" shall include a codicil and every writing making a voluntary posthumous disposition of property:  
 "Will."

(58)† expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form: and  
 "Writing."

(59)‡ "year" shall mean a year reckoned according to the British calendar.  
 "Year."

4. (1) The definitions in section 3 of the following words Application of foregoing and expressions, that is to say, "affidavits," "barrister," "British India," "District Judge" "father," "Government of India," "Her Majesty," or "the Queen," "High Court," "immoveable property," "imprisonment," "Local Government," "Magistrate," "month," "moveable property," "oath," "person," "section," "son," "swear," "will," and "year," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "Part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January 1887.

### *General Rules of Construction.*

5. (1) Where any Act of the Governor-General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

\* See the definition of "will" in s. 3 of the Indian Succession Act (X. of 1865).

† Compare s. 20 of the Interpretation Act, 1889 (52 & 53 Vic., c. 63).

‡ As to "financial year," see sub-s. (19), *supra*.

(2) Where any Act of the Governor-General in Council is reserved under the Indian Councils Act, 1861,\* section 20, for the signification of Her Majesty's pleasure thereon, then if no later date is expressed, it shall come into operation, if assented to by Her Majesty, on the day on which the assent of Her Majesty is duly proclaimed.

(3)† Unless the contrary is expressed, an Act of the Governor-General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

6.‡ Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act or Regulation had not been passed.

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\* Stat. 24 & 25 Vict., c. 67.

† Compare s. 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

As to power to make rules between the passing and commencement of an Act which does not come into force at once, see s. 22, *infra*.

‡ Compare s. 38 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63).

7.\* (1) In any Act of the Governor-General in Council or Regulation, made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

8.† Where this Act, or any Act of the Governor-General in Council or regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment, or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

9. (1) In any Act of the Governor-General in Council or Regulation made after the commencement of time. of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from," and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

10.‡ (1) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed

\* Compare s. 11 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† Compare s. 38 (1) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63); see a similar provision in s. 3 of the Code of Criminal Procedure (Act V. of 1898).

‡ See the Madras General Clauses Act (Mad. Act I. of 1891), s. 11.

period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

(2) This section applies also to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January 1887.

**11.\*** In the measurement of any distance, for the purposes of any Act of the Governor-General in Council or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

**12.** Where, by any enactment† now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure, or value of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

**13.** In all Acts of the Governor-General in Council and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

### *Powers and Functionaries.*

**14.** (1) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

\* Compare s. 34 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† As to definition "enactment," see s. 3, sub-s. (17) *supra*.

(2) This section applies also to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January, 1887.

15. Where, by any Act of the Governor-General in Council Power to appoint to include or Regulation, a power to appoint any power to appoint *ex-officio*. person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.\*

16. Where, by any Act of the Governor-General in Council Power to appoint to include or Regulation, a power to make any power to suspend or dismiss. appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.†

17. (1) In any Act of the Governor-General in Council Substitution of functionaries. or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

18. (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, Successors. for the purpose of indicating the relation of a law to the successors or any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

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\* See similar provision in s. 39 of the Code of Criminal Procedure (Act V. of 1898).

† See as to this provision the Statement of Objects and Reasons, quoted *supra*, p. 2.



(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

19. (1) In any Act of the Governor-General in Council or Official chiefs and sub-ordinates. Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887:

*Provisions as to Orders, Rules, etc., made under Enactments.*

20.\* Where, by any Act of the Governor-General in Council or Regulation, a power to issue any Construction of notification, orders, etc., issued under enactments. "notification,"† order, scheme, rule, form, or bye-law, is conferred, then expressions used in the "notification"† order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

21.‡ Where, by any Act of the Governor-General in Council or Regulation, a power to "issue notifications,"§ orders, rules, or bye-laws, is conferred, then that power includes a power, exerciseable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary, or rescind any "notifications,"† orders, rules or bye-laws so "substituted."§

\* Compare s. 31 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and s. 10 of the Madras General Clauses Act (Mad. Act I. of 1891).

† Inserted by Act I. of 1903.

‡ Compare s. 32 (3) of the Interpretation Act, 1889 (52 & 53, Vict. c. 63).

§ These words were substituted by Act I. of 1903.

**22.\*** Where, by any Act of the Governor-General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws, or orders so made or issued, shall not take effect till the commencement of the Act or Regulation.

**23.** Where, by any Act of the Governor-General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval, or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

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\* Compare s. 37 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

**24.\*** Where any Act of the Governor-General in Council or

Continuation of "appointment, notification"† orders, etc., issued under enactments repealed and re-enacted.

Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any "appointment, notification"† order, scheme, rule, form, or bye-law issued "made or"† under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been issued "made or"† under the provisions so re-enacted, unless and until it is superseded by any "appointment, notification"† order, scheme, rule, form, or bye-law issued under the provisions so re-enacted.

### *Miscellaneous.*

**25.** Section 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure‡ for the time being in force in re-

Recovery of fines.

lation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

**26.** Where an act or omission constitutes an offence under

Provision as to offences punishable under two or more enactments.

two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.§

**27.||** Where any Act of the Governor-General in Council or

Meaning of service by post.

Regulation made after the commencement of this Act authorizes or requires

\* Compare s. 18 of the Madras General Clauses Act (Mad. Act I. of 1891). Similar provisions occur frequently in Indian Acts, see *e. g.*, s. 2 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879).

† Inserted by Act I. of 1903.

‡ See now s. 386 *et seq.* of the Code of Criminal Procedure (Act V. of 1898).

§ As to definition of "offence" see *supra*, sub-s. (37).

|| Compare s. 26 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

any document to be served by post, whether the expression "serve," or either of the expressions "give" or "send," or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying, and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

**28.\*** (1) In any Act of the Governor-General in Council or

Citation of enactments. Regulation, and in any rule, bye-law, instrument, or document made under, or

with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any Act of the Governor-General in Council or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

**29.†** The provisions of this Act respecting the construction of

Saving for previous enact- Acts, Regulations, rules, or bye-laws-  
ments, rules, and bye-laws. made after the commencement of this  
Act, shall not affect the construction of any Act, Regulation, rule,  
or bye-law made before the commencement of this Act, although  
the Act, Regulation, rule, or bye-law is continued or amended by  
an Act, Regulation, rule, or bye-law made after the commencement  
of this Act.

## THE SCHEDULE.

[*Repealed by Act I. of 1903.*]

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\* Compare s. 35 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). Short titles have been conferred on the un-repealed General Acts of the Governor-General in Council which had previously no short titles. See the Indian Short Titles Act (XIV. of 1897).

† Compare s. 40 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

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THE  
GUARDIANS AND WARDS ACT, 1890  
(Act VIII. of 1890.)

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## THE SCHEDULE.

[THE  
GUARDIANS AND WARDS ACT 1890  
(Act VIII. of 1890).\*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1890.

*An Act to consolidate and amend the Law relating to  
Guardian and Ward.*

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows :—

CHAPTER 1.

PRELIMINARY.

Title, extent, and commencement.

1. (1) This Act may be called the Guardians and Wards Act, 1890:

(2) It extends to the whole of British India, inclusive of British Baluchistan; and

(3) It shall come into force on the first day of July 1890.

2. (1) On and from that day, the enactments mentioned in the Schedule shall be repealed to the extent specified in the third column thereof.

Repeal.

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1886, Pt. V., p. 77; for Report of the Select Committee, see *ibid.*, 1890, Pt. V., p. 77; and for Debates in Council, see *ibid.*, 1886, Supplement, pp. 419 and 666, and *ibid.*, 1890, Pt. VI., pp. 33 and 45.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

The Act has been declared in force in the Santhal Parganas by notification under s. 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by Regulation III. of 1899, s. 3; and in Angul and the Khondmals by Reg. I. of 1894, s. 3.

It has been declared not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, by notification under s. 3 (b) of the Scheduled Districts Act (XIV. of 1874).—See *Gazette of India*, 1898, Pt. I., p. 872.

† The words, "Upper Burma and," have been omitted here, having been repealed by the Fifth Schedule to the Burma Laws Act (XIII. of 1898).

(2) But all proceedings had, certificates granted, allowances assigned, obligations imposed, and applications, appointments, orders, and rules made under any of those enactments, shall, so far as may be, be deemed to have been respectively had, granted, assigned, imposed, and made under this Act; and

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by the Governor-General in Council, or by a Governor or Lieutenant-Governor in Council; and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by any High Court established under the Statute 24 and 25 Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).\*

#### Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875,† is to be deemed not to have attained his majority:

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property:

(3) "ward" means a minor for whose person or property, or both, there is a guardian:

(4) "District Court" has the meaning assigned to that expression in the Code of Civil Procedure,‡ and includes a High Court in the exercise of its ordinary original civil jurisdiction:

(5) "the Court" means the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; and where a guardian has been appointed or declared in pursuance of any such application,

\* Short title: The Indian High Courts Act, 1861.

† Act IX. of 1875.

‡ Act V. of 1908.



it means the Court which appointed or declared the guardian, or, in any matter relating to the person of the ward, the District Court having jurisdiction in the place where the ward for the time being ordinarily resides :

(6) "Collector" means the chief officer in charge of the revenue-administration of a district,\* and includes any officer whom the Local Government, by notification in the official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or, with respect to any class of persons, for all or any of the purposes of this Act :

(7) "European British subject" means an European British subject as defined in the Code of Criminal Procedure, 1898,† and includes any Christian of European descent; and

(8) "Prescribed" means prescribed by rules made by the High Court under this Act.

## CHAPTER II.

### APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed, by will or other instrument to take effect on the death of the person appointing,—

(a) by the father of the minor, or,

(b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from Saving of power to appoint in other cases.

\* For appointments of Collectors under this sub-section in—

(1) the Presidency of Bombay, *see* the Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. cxliii.;

(2) the North Western Provinces and Oudh, *see* the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 148.

† *See* s. 3 (1) of the new Code of Criminal Procedure (Act V. of 1898), according to which the original reference to the Code of 1882 has been altered to that of 1898.

any power to appoint a guardian of his person or property or both, which is valid by the law to which the minor is subject.

Power of the Court to make order as to guardianship.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property or both, or,

(b) declaring a person to be such a guardian, the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument, or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

Persons entitled to apply for order.

8. An order shall not be made under the last-foregoing section except on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides, or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a district Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if, in its opinion, the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the Code of Civil Procedure\* for the signing and verification of a plaint, and stating, so far as can be ascertained,—

- Form of application.
- (a) the name, sex, religion, date of birth, and ordinary residence of the minor;
  - (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;
  - (c) the nature, situation, and approximate value of the property, if any, of the minor;
  - (d) the name and residence of the person having the custody or possession of the person or property of the minor;
  - (e) what near relations the minor has, and where they reside;
  - (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled, or claiming to be entitled, by the law to which the minor is subject, to make such an appointment;
  - (g) whether an application has, at any time, been made to the Court, or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court, and with what result;
  - (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;
  - (i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

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\* Act V. of 1908.

- (j) where the application is to declare a person to be a guardian, the grounds on which that person claims;
- (k) the causes which have led to the making of the application; and
- (l) such other particulars, if any, as may be prescribed, or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court, and forwarded by post, or in such other manner as may be found convenient, and shall state, as far as possible, the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him, and attested by at least two witnesses.

**11.** (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application, and of the date fixed for the hearing,—

(a) to be served in the manner directed in the Code of Civil Procedure,\* on—

- (i) the parents of the minor if they are residing in British India,
  - (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
  - (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
  - (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and
- (b) to be posted on some conspicuous part of the Court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

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\* Act V. of 1908.

(2) The Local Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

**12.** (1) The Court may direct that the person, if any, having

Power to make interlocutory order for production of minor and interim protection of person and property.

the custody of the minor, shall produce him, or cause him to be produced, at such place and time, and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for the production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorize—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband unless she is already in his custody with the consent of her parents, if any, or

(b) any person, to whom the temporary custody and protection of the property of a minor is entrusted, to dispossess, otherwise than by due course of law, any person in possession of any of the property.

**13.** On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of, or in opposition to, the application.

Hearing of evidence before making of order.

**14.** (1) If proceedings for the appointment or declaration of a

Simultaneous proceedings in different Courts.

guardian of a minor are taken in more than one, each of those Courts

shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case through the Local Government to the Governor-General in Council, and the Governor-General in Council shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

**15.** (1) If the law to which the minor is subject admits of Appointment or declaration of several guardians. his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

(3) On the death of a mother being an European British subject, who, during the incapacity of the father of her minor child, has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child, or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person, and of the property, of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

**16.** If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certi-

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

fied copy of the order appointing or declaring the guardian, accept him as duly appointed or declared, and give effect to the order.

**17. (1)** In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears, in the circumstances, to be for the welfare of the minor.

Matters to be considered by the Court in appointing guardian. .

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex, and religion of the minor, the character and capacity of the proposed guardian, and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal if the minor is a male of tender years or a female, the minor should be given to the mother, and, if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) the Court shall not appoint or declare any person to be a guardian against his will.

**18.** Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Collector in virtue of office.

**19.** Nothing in this chapter shall authorize the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

Guardian not to be appointed by the Court in certain cases.

(a) of a minor who is a married female, and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or,

- (b) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living, and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

### CHAPTER III.

#### DUTIES, RIGHTS, AND LIABILITIES OF GUARDIANS.

##### *General.*

**20.** (1) A guardian stands in a fiduciary relation to his ward, and save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

**21.** A minor is incompetent to act as guardian of any minor except his own wife or child, or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

**22.** (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit, for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs.

**23.** A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters



connected with the guardianship of his ward, be subject to the control of the Local Government, or of such authority as that Government, by notification in the official Gazette,\* appoints in this behalf.

*Guardian of the Person.*

**24.** A guardian of the person of a ward is charged with the Duties of guardian of the custody of the ward, and must look to person. his support, health, and education, and such other matters as the law to which the ward is subject requires.

**25** (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and, for the purpose of enforcing the order, may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1898.†

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

**26.** (1) A guardian of the person appointed or declared by Removal of ward from the Court, unless he is the Collector, or jurisdiction. is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction, except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

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\* For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject in—

(1) the Presidency of Bombay, *see the Bombay List of Local Rules and Orders*, Vol. I., Ed. 1896, p. 542 ;

(2) the N.-W. P. and Oudh, *see the N.-W. P. and Oudh List of Local Rules and Orders*, Ed. 1894, p. 148.

† *See s. 3 (1) of the new Code of Criminal Procedure (Act V. of 1898), according to which the original reference to the Code of 1882 has been altered to that of 1898.*

*Guardian of Property.*

**27.** A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter, he may do all acts which are reasonable and proper for the realisation, protection, or benefit of the property.

**28.** Where a guardian has been appointed by will or other Powers of testamentary instrument, his power to mortgage or guardian. charge, or transfer by sale, gift, exchange, or otherwise, immoveable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has, under this Act, been declared guardian, and the Court which made the declaration permits him, by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

**29.** Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

**30.** A disposal of immoveable property by a guardian in contravention of either of the two last-foregoing sections is voidable at the instance of any other person affected thereby.

Voidability of transfers made in contravention of section 28 or section 29.

**31.** (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity, or for an evident advantage to the ward.

Practice with respect to permitting transfers under section 29.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated, and signed by the Judge of the Court with his own hand, or, when, from any cause, he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation, and be dated and signed by him.

(3) The Court may, in its discretion, attach to the permission the following among other conditions, namely—

(a) that a sale shall not be completed without the sanction of the Court ;

(b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs ;

(c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years, and subject to such rents and covenants, as the Court directs ;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom, or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

**32.** Where a guardian of the property of a ward has been

Variation of powers of appointed or declared by the Court, and guardian of property appointed or declared by the Court. such guardian is not the Collector, the Court may, from time to time, by order, define, restrict, or extend his powers with respect to the property of the ward in such manner, and to such extent, as it may consider to

### *Guardian of Property.*

**27.** A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this chapter, he may do all acts which are reasonable and proper for the realisation, protection, or benefit of the property.

**28.** Where a guardian has been appointed by will or other Powers of testamentary instrument, his power to mortgage or guardian. charge, or transfer by sale, gift, exchange, or otherwise, immoveable property belonging to his ward, is subject to any restriction which may be imposed by the instrument, unless he has, under this Act, been declared guardian, and the Court which made the declaration permits him, by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

**29.** Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange, or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years, or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

**30.** A disposal of immoveable property by a guardian in contravention of either of the two last-foregoing sections is voidable at the instance of any other person affected thereby.

Voidability of transfers made in contravention of section 28 or section 29.

**31.** (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity, or for an evident advantage to the ward.

Practice with respect to permitting transfers under section 29.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated, and signed by the Judge of the Court with his own hand, or, when, from any cause, he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation, and be dated and signed by him.

(3) The Court may, in its discretion, attach to the permission the following among other conditions, namely—

- (a) that a sale shall not be completed without the sanction of the Court;
- (b) that a sale shall be made to the highest bidder by public auction before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;
- (c) that a lease shall not be made in consideration of a premium, or shall be made for such term of years, and subject to such rents and covenants, as the Court directs;
- (d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom, or to be invested by the Court on prescribed securities, or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

**32.** Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict, or extend his powers with respect to the property of the ward in such manner, and to such extent, as it may consider to

Variation of powers of guardian of property appointed or declared by the Court.

be for the advantage of the ward and consistent with the law to which the ward is subject.

**33. (1)** A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice, or direction on any present question respecting the management or administration of the property of his ward.

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian, stating in good faith the facts in the petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

Obligations on guardian of property appointed or declared by the Court.

**34.** Where a guardian of the property of a ward has been appointed or declared by the Court, and such guardian is not the Collector, he shall,—

(a) if so required by the Court, give a bond, as nearly as may be, in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward ;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward ;

(c) if so required by the Court, exhibit his accounts in the Court at such times, and in such form, as the Court from time to time directs ;

(d) if so required by the Court, pay into the Court, at such time as the Court directs, the balance due from him on those accounts, or so much thereof as the Court directs; and

(e) apply, for the maintenance, education, and advancement of the ward, and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

**35.** Where a guardian appointed or declared by the Court has

Suit against guardian given a bond duly to account for what  
where administration-bond he may receive in respect of the property  
was taken. of his ward, the Court may, on applica-

tion made by petition, and, on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

**36. (1)** Where a guardian appointed or declared by the Court

Suit against guardian has not given a bond as aforesaid, any  
where administration-bond person, with the leave of the Court, may,  
was not taken. as next friend, at any time during the

continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440\* of the Code of Civil Procedure as amended by this Act.

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\* That is, s. 440 of Act XIV. of 1882. But see now the corresponding provisions contained in rr. 1 and 4 (2) of O. XXXII. of Act V. of 1908 (the new Code entirely repealing that of 1882).

### 37. Nothing in either of the two last-foregoing sections shall

General liability of guardian as trustee. be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

### *Termination of Guardianship.*

### 38. On the death of one of two or more joint guardians, the

Right of survivorship among joint guardians. guardianship continues to the survivor or survivors until a further appointment is made by the Court.

### 39. The Court may, on the application of any person in-

Removal of guardian. terested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely—

- (a) for abuse of his trust ;
- (b) for continued failure to perform the duties of his trust ;
- (c) for incapacity to perform the duties of his trust ;
- (d) for ill-treatment, or neglect to take proper care, of his ward ;
- (e) for contumacious disregard of any provision of this Act, or of any order of the Court ;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward ;
- (g) for having an interest adverse to the faithful performance of his duties ;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court ;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency ;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject :



Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed,—

(a) for the cause mentioned in clause (g), unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or,

(b) for the cause mentioned in clause (h), unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

**40.** (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

Discharge of guardian.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and, if the guardian making the application is the Collector, and the Local Government approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of authority of guardian.

**41.** (1) The powers of a guardian of the person cease—

(a) by his death, removal, or discharge;

(b) by the Court of Wards assuming superintendence of the person of the ward;

(c) by the ward ceasing to be a minor;

(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person, or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,

(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so, or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

(a) by his death, removal, or discharge;

(b) by the Court of Wards assuming superintendence of the property of the ward ; or

(c) by the ward ceasing to be a minor.

(3) When, for any cause, the powers of a guardian cease, the Court may require him, or, if he is dead, his representative, to deliver, as it directs, any property in his possession or control belonging to the ward, or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

**42.** When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion, or on application under Chapter II., may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

## CHAPTER IV.

### SUPPLEMENTAL PROVISIONS.

**43.** (1) The Court may, on the application of any person interested, or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor, or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-

section (1), to the guardian, or, in a case under sub-section (2), to the guardian who has not made the application.

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492\* or section 493\* of the Code of Civil Procedure in a case under sub-section (1), as if the ward were the plaintiff, and the guardian were the defendant, or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff, and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the  
 Penalty for removal of Court from exercising its authority with  
 ward from jurisdiction. respect to a ward, a guardian appointed  
 or declared by the Court removes the ward from the limits of the  
 jurisdiction of the Court in contravention of the provisions of sec-  
 tion 26, he shall be liable, by order of the Court, to fine not exceed-  
 ing one thousand rupees, or to imprisonment in the civil jail for a  
 term which may extend to six months.

Penalty for contumacy. 45. (1) In the following cases,  
 namely—

- (a) if a person having the custody of a minor fails to pro-  
 duce him or cause him to be produced in com-  
 pliance with a direction under section 12, sub-section  
 (1), or to do his utmost to compel the minor to  
 return to the custody of his guardian in obedience  
 to an order under section 25, sub-section (1), or
- (b) if a guardian appointed or declared by the Court fails  
 to deliver to the Court, within the time allowed by  
 or under clause (b) of section 34, a statement re-  
 quired under that clause, or to exhibit accounts in  
 compliance with a requisition under clause (c) of  
 that section, or to pay into the Court the balance due  
 from him on those accounts in compliance with a  
 requisition under clause (d) of that section, or

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\* Instead of these sections of Act XIV. of 1882, see now rr. 1 and 2, respectively, of O. XXXIX. of Act V. of 1908 (the Code now in operation), whereby the Old Code (the Act first-mentioned) has been repealed *in toto*.

- (c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian, or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and, in case of recusancy, to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor, or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and recommitted to the civil jail.

**46.** (1) The Court may call upon the Collector, or upon any Reports by Collectors and Court subordinate to the Court, for a subordinate Courts. report on any matter arising in any proceeding under this Act, and treat the report as evidence.

(2) For the purpose of preparing the report, the Collector or the Judge of the subordinate Court, as the case may be, shall make such enquiry as he deems necessary, and may, for the purposes of the enquiry, exercise any power of compelling the attendance of a witness to give evidence, or produce a document, which is conferred on a Court by the Code of Civil Procedure.\*

**47.** An appeal shall lie to the High Orders appealable. Court from an order made by a District Court,—

- (a) under section 7, appointing or declaring, or refusing to appoint or declare, a guardian; or,
- (b) under section 9, sub-section (3), returning an application; or,
- (c) under section 25, making, or refusing to make, an order for the return of a ward to the custody of his guardian; or,

- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto ; or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section ; or
- (f) under section 32, defining, restricting, or extending the powers of a guardian ; or,
- (g) under section 39, removing a guardian ; or,
- (h) under section 40, refusing to discharge a guardian ; or
- (i) under section 43, regulating the conduct or proceedings of a guardian, or settling a matter in difference between joint guardians, or enforcing the order ; or,
- (j) under section 44 or section 45, imposing a penalty.

**48.** Save as provided by the last-foregoing section, and by section 622\* of the Code of Civil Procedure, an order made under this Act shall be final, and shall not be liable to be contested by suit or otherwise.

**49.** The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

**50.** (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may, from time to time, make rules consistent with this Act—

- (a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts ;
- (b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted ;
- (c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ;

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\* S. 622 of Act XIV. of 1882. But *see now* the corresponding section or part in Act V. of 1908 (the new Code now in force).

- (d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c), and (d) of section 34 should be made,
- (e) as to the preservation of statements and accounts delivered and exhibited by guardians ;
- (f) as to the inspection of those statements and accounts by persons interested ;
- (g) as to the custody of money and securities for money belonging to wards ;
- (h) as to the securities on which money belonging to wards may be invested ;
- (i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,
- (j) generally, for the guidance of the Courts in carrying on the purposes of this Act.

(a) Rules under clauses (a) and (i) of sub-section (1) shall not have effect until they have been approved by the Local Government, nor shall any rule under this section have effect until it has been published in the official Gazette.

**51.** A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it as if he had been appointed or declared by the Court under Chapter II.

**52.** In section 3 of the Indian Majority Act, 1875,\* for the words, "every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards," the following shall be substituted, namely :—

"every minor of whose person or property, or both, a guardian other than a guardian for a suit within the meaning of Chapter

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\* Act IX. of 1875.

XXXI.\* of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age."

53. *Amendment of Chapter XXXI. of the Code of Civil Procedure. [Repealed by Act V. of 1908.]*

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\* Instead of Ch. XXXI. of Act XIV. of 1882 (the old Code *now* repealed *in toto*), see *now* the corresponding portion of Act V. of 1908 (the new Code now repealing the Act first mentioned).

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## THE SCHEDULE :

## ENACTMENTS REPEALED

*(See section 2).*

Number and year.	Title or subject.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XIV. of 1855	Minors (Madras)	The whole.
XL. of 1858	Minors (Bengal)	So much as has not been repealed.
IX. of 1861	Minors ...	The whole.
XX. of 1864	Minors (Bombay).	The whole.
XIV. of 1869	Bombay Civil Courts Act, 1869.	So much of the last paragraph of section 16 as has not been repealed.
VII. of 1870	Court Fees Act, 1870.	Section 19H and article 10 of Schedule I.
IV. of 1872	Punjab Laws Act, 1872.	So far as it relates to Act XL. of 1858.
XIX. of 1873*	North-Western Provinces Land-Revenue Act, 1873.	Section 258.
XIII. of 1874	European British Minors Act, 1874.	The whole.
XV. of 1874	Laws Local Extent Act, 1874.	So far as it relates to any enactment repealed by this Act.
XX. of 1875	Central Provinces Laws Act, 1875.	So far as it relates to Act XL. of 1858.
XVIII. of 1876	Oudh Laws Act, 1876.	So far as it relates to Act XL. of 1858.
XIII. of 1879	Oudh Civil Courts Act, 1879.	Clause (1) of section 25 relating to proceedings under Acts XL. of 1858 and IX. of 1861.

\* The whole of Act XIX. of 1873 has now been repealed by N.W.P. Act III. of 1901.



THE SCHEDULE—(*continued*) :ENACTMENTS REPEALED—(*continued*).

Number and year.	Title or subject.	Extent of repeal.
<i>Acts of the Governor-General in Council—(contd.).</i>		
XIV. of 1882* ...	Code of Civil Procedure, 1882.	The second paragraph of section 443.
XVIII. of 1884 ...	Punjab Courts Act, 1884.	So much of section 29 as has not been repealed.
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887.	Clause (b) of section 23, sub-section (2).

*Madras Regulations.*

V. of 1804 ...	Court of Wards ...	Section 20, and so much of sections 21 and 22 as relates to persons and property of minors not subject to the superintendence of the Court of Wards.
X. of 1831 ...	Minors' Estates ...	Section 3.

*Regulation under the Statute 33 Victoria, Chapter 3.*

IX. of 1874 ...	Arakan Hill District Laws.	So far as it relates to Acts XL. of 1858 and IX. of 1861
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\* The whole Act has since been repealed and replaced by Act V. of 1908 (the Code of Civil Procedure now in force).



# ACT XV. OF 1856.\*

## The Hindu Widows' Re-marriage Act, 1856.

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JULY 1856.

*An Act to remove all legal obstacles to the marriage of Hindu Widows.*

WHEREAS it is known that, by the law as administered in the  
Civil Courts established in the territories  
Preamble. in the possession and under the Govern-  
ment of the East India Company, Hindu widows, with certain  
exceptions, are held to be, by reason of their having been once

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\* This is the short title given to this Act by the Indian Short Titles Act (XIV. of 1897).

This Act has been declared to be in force in—

- (1) the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3 :
- (2) the Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886) :
- (3) the Arakan Hill District, by the Arakan Hill District Laws Regulation (IX. of 1874) :
- (4) Angul and the Khondmals, by the Angul District Regulation (I. of 1894).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

- (1) Sindh (see *Gazette of India*, 1880, Pt. I., p. 672) :
- (2) West Jalpaiguri (see *Gazette of India*, 1881, Pt. I., p. 74) :
- (3) The Districts of Hazaribagh, Lohardaga, and Mahbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504.)
- (4) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 605.)
- (5) The Scheduled portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383) :
- (6) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I. p. 382) :
- (7) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 48) :
- (8) District of Lahaul (see *Gazette of India*, 1886, Pt. I., p. 301) :
- (9) The Scheduled Districts of the Central Provinces (see *Gazette of India*, 1879, Pt. I., p. 771) :
- (10) Coorg (see *Gazette of India*, 1878, Pt. I., p. 747) :

married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property; and whereas many Hindus believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the civil law administered by the Courts of Justice shall no longer prevent those Hindus who may be so minded from adopting a different custom, in accordance with the dictates of their own conscience; and whereas it is just to relieve all such Hindus from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindu widows will tend to the promotion of good morals and to the public welfare; It is enacted as follows:—

1. No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu law to the contrary notwithstanding.

2. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon

(11) The District of Silhat (see *Gazette of India*, 1879, Pt. I, p. 631):

(12) The District of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills) (see *Gazette of India*, 1878, Pt. I, p. 533):

(13) The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goalpara District (see *Gazette of India*, 1897, Pt. I, p. 299):

(14) The Porahat Estate in the Singbhum District (see *Gazette of India*, 1897, Pt. I, p. 1059):

It has been extended, by notification under s. 5 of the last mentioned Act, to the following Scheduled Districts namely:—

(1) The Tarai District (see *Gazette of India*, 1876, Pt. I, p. 505):

(2) The Andaman and Nicobar Islands (see *Gazette of India*, 1882, Pt. I, p. 148):

As to the effect of unchastity in the case of a widow who has once inherited, see 13 B. L. R., 1.

her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died,\* and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

3. On the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted, by the will or testamentary disposition of the deceased husband, the Guardianship of children of deceased husband on the re-marriage of his widow. guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court, having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment, the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother.

Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

4. Nothing in this Act contained shall be construed to render Nothing in this Act to any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting. render any childless widow capable of inheriting. property, is a childless widow, capable of inheriting the whole or any share of such property, if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

5. Except as in the three preceding sections is provided, a widow shall not, by reason of her re-marrying, except as provided in sections 2, 3, and 4. widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be

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\* *Parvati v. Bhiku*, 4 Bom. A. C. J. 25 : *Akora Suth v. Boreani*, 2 B. L. R., 198.

entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

**6.** Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindu female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed, or made on the marriage of a Hindu widow; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

**7.** If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or, if she has no father, of her paternal grand-father, or, if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or failing also brothers, of her next male relative.

All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both.

And all marriages made contrary to the provisions of this section may be declared void by a Court of law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated.

In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid,

# THE HINDU WILLS ACT, 1870.

(Act XXI. of 1870.)\*

RECEIVED THE G.-G.'S ASSENT ON 19TH JULY 1870.

*An Act to regulate the Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and the Towns of Madras and Bombay.*

WHEREAS it is expedient to provide rules for the execution, attestation, revocation, revival, interpretation, and probate of the wills of Hindus, Jainas, Sikhs, and Buddhists in the territories subject to the Lieutenant-Governor of Bengal, and in the towns of Madras and Bombay; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Hindu Wills Act, 1870.

Certain portions of Act X. of 1865 extended to wills of Hindus, Jainas, Sikhs, and Buddhists.

2. The following portions of the Indian Succession Act, 1865,† namely,—

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\* For the Statement of Objects and Reasons, see *Gazette of India*, 1860, Pt. V., p. 32; for the first Report of the Select Committee, which was ordered to be published by the Council, see *ibid*, 1870, Pt. V., p. 11; for Proceedings in Council, see *ibid*, 1869, Supplement, p. 1499; Supplement, 1870, p. 76, Extra Supplement, p. 34, and Supplement, p. 957.

Act XXI. of 1870 has been declared by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I., p. 504.

[The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.]

It has been declared to be in force in the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by the Santhal Parganas Justice and Laws Regulation (III. of 1899), s. 3.

† Act X. of 1865.

[2,000 13-6-1912]

Act XXI., 1870.—1.

sections 46, 48, 49, 50, 51, 55, and 57 to 77 (both inclusive),  
 sections 82, 83, 85, 88 to 103 (both inclusive),  
 sections 106 to 177 (both inclusive), " and  
 section 187,"\*

shall, notwithstanding anything contained in section 331 of  
 said Act, apply,—

(a) to all wills and codicils made by any Hindu, Jaina,  
 Extent of Act. Sikh, or Buddhist, on or  
 after the first day of  
 September, 1870,

within the said territories or the local limits of the ordinary  
 original civil jurisdiction of the High Courts of  
 Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those  
 territories and limits, so far as relates to immoveable  
 property situated within those territories or limits:

Provisos. **3.** Provided that marriage shall  
 not revoke any such will or codicil:

And that nothing herein contained shall authorize a testator  
 to bequeath property which he could not have alienated *inter vivos*,  
 or to deprive any persons of any right of maintenance of which,  
 but for section 2 of this Act, he could not deprive them  
 by will:†

And that nothing herein contained shall affect any law of  
 adoption or intestate succession:

And that nothing herein contained shall authorize any Hindu,  
 Jaina, Sikh, or Buddhist to create in property any interest which  
 he could not have created before the first day of September, 1870.

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\* The words and figures, "and section 187," have been substituted  
 for the portion of section 2 commencing with the word and figures "section  
 179" and ending with the words "administrator with the will annexed,"  
 by section 154 (a) of the Probate and Administration Act (V. of 1881).

† The words, "And that nothing herein contained shall vest in the  
 executor or administrator with the will annexed of a deceased person any  
 property which such person could not have alienated *inter vivos*;" repealed  
 by s. 154 (b) of the Probate and Administration Act (V. of 1881), have  
 here been omitted.



4. On and from that day, section 2 of Bengal Regulation V. of 1799 shall be repealed, so far as relates to the executors of persons who are not Muhammadans, but are subject to the jurisdiction of a District Court in the territories subject to the Lieutenant-Governor of Bengal.

5. Nothing contained in this Act shall affect the rights, duties and privileges of the Administrators-General of Bengal, Madras, and Bombay, respectively.\*

6. In this Act and in the said sections† of the Indian Succession Act,‡ all words defined in section 3 of the same Act shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section 3 has attached to such words respectively :

And in applying sections 62, 63, 92, 96, 98, 99, 100, 101, 102, "and 103"§ of the said Succession Act‡ to wills and codicils made under this Act, the words "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child, whether adopted or natural-born; and the expression "daughter-in-law" shall be deemed to include the wife of an adopted son.||

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\* See the Administrator-Generals Act (II. of 1874).

† The words "and Parts," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

‡ Act X. of 1865.

§ The word and figures "and 103" have been substituted for the word and figures "103 and 182" by s. 154 (c) of the Probate and Administration Act (V. of 1881).

|| The last clause of s. 6, as to the making of grants of letters of administration, repealed by s. 154 (b) of the Probate and Administration Act (V. of 1881), has here been omitted.



# ACT II. OF 1886.

## The Indian Income Tax Act, 1886.

[As modified up to September, 1907.]

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47. Power to declare principal place of business or residence.
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## THE FIRST SCHEDULE.

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## FORM OF PETITION.

# ACT II. OF 1886.

## The Indian Income Tax Act, 1886.\*

RECEIVED THE G.-G.'S ASSENT ON THE 29TH JANUARY. 1886.

*An Act for imposing a Tax on Income derived from Sources other than Agriculture.*

WHEREAS it is expedient to impose a tax on income derived from sources other than agriculture; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

1. (1) This Act extends to the whole of British India, and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India, or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf; and

(2) It shall come into force on the first day of April 1886.

(3) [*Repealed by the Repealing and Amending Act (XII. of 1891) Sch. I.*]

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\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V., p. 33; for Report of the Select Committee, see *Ibid.* Pt. IV., p. 41; and for Proceedings in Council, see *Ibid.* Supplement, pp. 45, 179, and 214. For consolidated rules made under the powers conferred by the Act, see Gazette of India, 1890 Pt. I., p. 409—Notification No. 2763.

Act II. of 1886 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1899); and in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898), (see the first schedule and s. 4).

The Act had already been extended there under s. 5 of the Scheduled Districts Act (XIV. of 1874)—See Gazette of India, 1896, Pt. I., p. 974.

2. On and from the day on which this Act comes into force, the enactments specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

**Definitions.**

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “local authority” means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund :

(2) “company” means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not :

(3) “prescribed” means prescribed by the Governor-General in Council by notification in the Gazette of India, or by the Governor-General in Council or a Local Government by rules made under this Act :

(4) “salary” includes allowances, fees, commissions, perquisites, or profits received, in lieu of, or in addition to, a fixed salary, in respect of an office or employment of profit ; but subject to any rule which may be prescribed in this behalf, it does not include travelling, tentage, horse, or sumptuary allowance, or any other allowance granted to meet specific expenditure :

(5) “income” means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension, or gratuity payable to that subject by the Government, or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf ;

(6) “Magistrate” means a Presidency Magistrate or a Magistrate of the first or second class :

(7) “person” includes a firm and a Hindoo undivided family :

(8) “defaulter” includes a company or firm making default under this Act :

(9) “Collector” means the chief officer in charge of the revenue administration of a district, and in a presidency-town, any officer

whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency-town in which its principal place of business in British India is situate; and, in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency-town in which the person has his residence:

(10) "principal officer," used with reference to a local authority or a company or any other public body or association not being a local authority or company, means—

(a) the secretary, treasurer, manager, or agent of the authority, company, body, or association; or

(b) any person connected with the authority, company, body, or association upon whom the Collector has caused a notice to be served of his intention of treating him as the principal officer thereof; and

(11) "Part" means a Part of the second schedule to this Act.

## CHAPTER II.

### LIABILITY TO TAX.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April 1886, and in each subsequent year, to the credit of the Government of India, or as the Governor-General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

Exceptions.

5. (1) Nothing in section 4 shall render liable to the tax—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government as such; or

(b) any income derived from—

(i) agriculture, or

- (ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or
- (iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce; or
- (c) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce whereof, any operation mentioned in clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue, or the cultivator or the receiver of the rent-in-kind, by reason of his connection with the land, requires as a dwelling-house, or as a store-house, factory, or other out-building ; or

(d) any profits of a shipping company incorporated or registered out of British India, and having its principal place of business out of India, and its ships ordinarily engaged in sea-going traffic out of Indian waters ; or

(e) any income derived from property solely employed for religious or public charitable purposes ; or

(f) any income which a person enjoys as a member of a company, or of a firm, or of a Hindu undivided family, when the company, or the firm, or the family is liable to the tax ; or

(g) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth of the income in respect whereof a person would, but for this exception, be chargeable under this Act, as is deducted from the salary of the person under the authority, or with the permission, of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death, or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life, or on the life of his wife ; or

(h) any interest on stock-notes ; or

(i) the salary of any officer, warrant-officer, non-commissioned officer, or private of Her Majesty's Forces, or of Her Majesty's



Indian Forces, who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem; or

(j) any person whose income from all sources is less than "one thousand"\* rupees per annum.

(2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

6. The Governor-General in Council may, by notification in the Gazette of India, exempt from liability to the tax† the whole or any part of the income of any class or tribe, or of any persons residing in any specified area, and may, by a like notification, revoke the exemption.

### CHAPTER III.

#### ASSESSMENT AND COLLECTION.

##### A.—SALARIES AND PENSIONS.

7. In the case of a person receiving any salary, annuity, pension, or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension, or gratuity, shall be reduced by the amount of the tax to which he is liable under Part I. in respect thereof.

8. (1) In the case of a person receiving any salary, annuity, pension, or gratuity from a local authority, the tax to which he is liable under Part I. shall, at the time of the payment to him of any of the salary, annuity, pension, or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India, or as the Governor-General in Council directs.

\* These words have been substituted for the words "five hundred" by Act XI. of 1903, s. 2 (1).

† For the consolidated notification as to exemptions from tax and assessment under the Act, issued under s. 6, and s. 38, see Gazette of India, 1890, Pt. I., p. 408, and *Ibid*, 1893, Pt. I., p. 647.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is, from any cause, not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension, or gratuity, is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. (1) The tax to which a person receiving any salary, annuity, pension, or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I., shall be payable by him at the time when any portion of the salary, annuity, pension, or gratuity, is paid to him.

(2) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid, or any private employer, with respect to the recovery, on behalf of the Government by the company, body, association, or employer, of the tax to which any person, receiving any salary, annuity, pension, or gratuity, from the company, body, association, or employer, is liable under Part I.

10. The principal officer of every local authority, and of every company, and of every other public body or association, not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver, or cause to be delivered, to the Collector, in the prescribed form, a return in writing showing—

(a) the name of every person who is receiving, at the date of the return, any salary, annuity, or pension, or has received, during the year ending on that date, any gratuity from the authority, company, body, or association, as the case may be, and the address of every such person, so far as it is known; and

(b) the amount of the salary, annuity, pension, or gratuity so received by each such person, and the time at which the same becomes payable, or, in the case of a gratuity, was paid.

## B.—PROFITS OF COMPANIES.

**11.** The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver, or cause to be delivered, to the Collector, a statement in writing signed by him of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of the nett profits so made during the year ending on the said thirty-first day of March.

**12. (1)** If the Collector has reason to believe that a statement delivered under section 11 is incorrect or in complete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced, for the inspection of the Collector, such of the accounts of the company as refer to the year to which the statement relates, and as are in his possession or power.

**(2)** On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II., and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

## C.—INTEREST ON SECURITIES.

**13. (1)** The tax payable under Part III. in respect of the interest on any of the securities mentioned in that Part shall, at the time when, and place where, any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of the Government of India, or as the Governor-General in Council directs.

**(2)** If that person does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

## D.—OTHER SOURCES OF INCOME.

*Ordinary Mode of Assessment and Collection.*

**14.** The Collector shall, from time to time, determine what persons are chargeable under Part IV., and the amount at which every person so chargeable shall be assessed.

**15.** (1) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income accruing to him during the year ending on the said thirty-first day of March.

(2) In the case of a person for the first time becoming chargeable under Part IV. within the year for which the assessment is to be made, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

**16.** (1) The Collector shall in each year prepare a list of the persons chargeable under Part IV., whose annual income does not, in his opinion, amount to two thousand rupees.

(2) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely:—

(a) his name, and the source or sources of the income in respect of which he is chargeable;

(b) the year or portion of the year for which the tax is to be paid;

(c) the place or places, district or districts, where the income accrues;

(d) the amount to be paid; and

(e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector, with a notification prefixed thereto, requiring every person mentioned in

the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adapted for giving information to all persons concerned.

(6) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

**17.** In the case of a person chargeable under Part IV., whose

Notices to persons with in- annual income is, in the Collector's  
comes of two thousand rupees opinion, two thousand rupees or up-  
and upwards. wards, the Collector shall cause a no-  
tice to be served on him, stating the particulars (a) to (e), both in-  
clusive, mentioned in section 16, sub-section (2), and requiring him  
to pay within sixty days from a date specified in the notice, the  
amount stated therein as payable by him, or to apply to the Col-  
lector, within thirty days from that date, to have the assessment re-  
duced or cancelled.

**18.** (1) Notwithstanding anything contained in section 16

Power to modify ordinary or section 17, the Local Government  
precedure in special cases. may make rules—

(a) authorizing or directing a Collector in specified cases or classes of cases to include, in a list under section 16, any person who is liable to be served with a notice under section 17 instead of, or in addition to, serving him with such a notice, and to serve a notice under section 17 on any person liable to be included in a list under section 16 instead of, or in addition to, including him in such a list ;

(b) authorizing the Collector in any specified town or place to cause a general notice to be published, inviting every person chargeable under Part IV. to deliver, or cause to be delivered, to the Collector, within a time specified in the notice, a return, in a prescribed form published with the notice, of his income during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year

ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March ;

(c) authorizing the Collector in any presidency-town to cause a special notice to be served on any person chargeable under Part IV., inviting him to deliver, or cause to be delivered, to the Collector, within a time specified in the notice, a return, in a prescribed form accompanying the notice, of his income computed in the manner described in clause (b) of this sub-section.

(2) A return delivered under rules made under clause (b) or clause (c) of sub-section (1) must state the period during which the income has actually accrued ; and there must be added at the foot thereof a declaration that the income shown in the return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other source of income.

(3) When a Collector authorized in that behalf by rules made under clause (b) or clause (c) of sub-section (1) has caused a notice to be published or served under those rules, he shall not include any person to whom the notice applies in any list made under section 16, or serve a notice on him under section 17, until the time specified in the notice published or served under those rules has expired.

(4) Rules made under this section shall be published in the official Gazette.

19. Every amount specified as payable in a list or notice

Time and place of payment. prepared or served under section 16 or section 17 shall be paid within the time, at the place, and to the person, mentioned in the list or notice.

### *Trustees, Agents, Managers, and Incapacitated Persons.*

20. A person being the trustee, guardian, curator, or com-

Trustees, guardians, and committees of any infant, married woman or idiot, and having the control of the property of the infant, married woman, lunatic, or idiot, whether the infant, married woman, lunatic, or idiot resides in British India or not, shall, if the infant, married woman, lunatic, or idiot is chargeable under Part IV., be chargeable under that Part in like manner, and to the same amount, as the infant would be chargeable

if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

**21.** Any person not resident in British India, whether a Non-residents to be charged in names of their agents. subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV., shall be chargeable under that Part in the name of the agent in the like manner, and to the like amount, as he would be chargeable if he were resident in British India, and in direct receipt of that income.

**22.** Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrators-General of Bengal, Madras, and Bombay, and the Official Trustees, shall be chargeable under Part IV. in respect of all income officially in their possession, or under their control, which is liable to assessment under that part.

Power to retain duties charged on trustees, &c. **23.** When a trustee, guardian, curator, committee, or agent is, as such, assessed under Part IV.,

or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator-General, or an Official Trustee, is assessed under that Part in respect of income officially received,

the person or Court so assessed may, from time to time, out of the money coming to his or its possession as trustee, guardian, curator, committee, or agent, or as receiver, manager, Court of Wards, Administrator-General, or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

### *Occupying Owners.*

**24. (1)** Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

(2) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

## CHAPTER IV.

## REVISION OF ASSESSMENT.

**25.** (1) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV., may apply by petition to the Collector to have the assessment reduced or cancelled.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

**26.** The Collector shall fix a day and place for the hearing of the petition, and on the day and at the place so fixed, or on the day and at the place, if any, to which he has adjourned the hearing, shall hear the petition, and pass such order thereon as he thinks fit.

**27.** Subject to the control of the Local Government, the Commissioner of the Division, on the petition of any person deeming himself aggrieved by an order under section 12, sub-section (2), or section 26, shall, if the amount of the assessment to which the petition relates is two hundred and fifty rupees or upwards, and may in his discretion, if the amount of the assessment is less than two hundred and fifty rupees, call for the record of the case, and pass such order thereon as he thinks fit.

**28.** The Collector or Commissioner may, for the purpose of enabling him to determine how the petitioner or the company which he represents should be assessed, summon and enforce the attendance of witnesses, and compel them to give evidence and compel the production of documents, by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure:\*



Provided that the Collector or Commissioner shall not call for any evidence except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

## CHAPTER V.

### RECOVERY OF ARREARS OF TAX.

**29.** The tax chargeable under this Act shall be payable at the time appointed in that behalf in or under this Act, or, if a time is not so appointed, then on the first day of June in each year.

**30.** (1) In any case of default under this Act, the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land-revenue, or by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered from the defaulter:

Provided that, where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) The Local Government may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (1) for the recovery of the tax chargeable under this Act.

(3) An order passed by the Collector under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure\* for the enforcement of decrees for money; and the procedure under the said Code\* in respect of the following matters, namely,—

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\* Act XIV. of 1882.

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code\* upon the Court shall be exercised and discharged by the Collector by whom the order has been made, or to whom a copy thereof has been sent for execution according to the provisions of the said Code,\* sections 223 and 224.

(4) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act shall be recovered therein with, and as an addition to, any municipal tax or local rate by the same person, and in the same manner, as the municipal tax or local rate is recovered.

(5) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which the sum is payable.

## CHAPTER VI.

### SUPPLEMENTAL PROVISIONS.

#### *Composition.*

31. (1) If a company or person desires to compound for the tax assessable under Part II. or Part IV., as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms, and for such period, as he thinks fit.

(2) The agreement shall provide for the payment, in each year of the period comprised in the agreement, of the amount of the composition; and that amount shall be recoverable in the same manner, and by the same means as any other assessment made under Part II. or Part IV., as the case may be.

*Receipts.*

**32.** When any money is paid under this Act to the Collector, or is recovered thereunder by him, he shall give a receipt for the same, specifying—

- Receipts and their contents.
- (a) the date of the payment or recovery of the money;
  - (b) the amount paid or recovered;
  - (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable;
  - (d) the year or part of the year for which the tax was payable;
  - (e) the place or places, district or districts, where the income accrues; and
  - (f) such other particulars, if any, as may be prescribed.

*Amendment of Assessment.*

**33.** If a company or person assessed under Part II. or Part IV. ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person, or its or his representative, in interest, may apply to the Collector during or within three months after the end of the year, and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

*Penalties.*

Failure to make payments or deliver returns or statements.

**34.** (1) If a person fails—

- (a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or
- (b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or
- (c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice.

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

35. If a person makes a statement in a declaration mentioned in section 18, sub-section (2), which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.\*

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

37. Any proceeding under section 12 or Chapter IV. of this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.\*

#### *Power to make rules.*

38.† (1) The Governor-General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessments under Part IV., and generally for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) In making a rule for preventing the disclosure of any particulars referred to in sub-section (1), the Governor-General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code.\*

\* Act XLV. of 1860.

† As to exemption from liability to assessment, see *Gazette of India*, 1890, Pt. I., p. 408, and *ibid*, 1893, Pt. I., p. 647.

(3) But a person committing any such offence shall not be liable to be prosecuted therefor without the previous sanction of the Local Government.

(4) Rules made under this section shall be published in the official Gazette.

### *Miscellaneous.*

**39.** No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.  
Bar of suits in Civil Court.

**40.** All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf.\*  
Exercise of powers of Collector and Commissioner.

**41.** An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—  
Obligation to furnish information respecting lodgers and employés.

(a) the name of every inmate or lodger resident in any house used by him as a dwelling-house, or let by him in lodgings ;

(b) the name of every other person receiving salary or emoluments amounting to "*eighty-three rupees five annas and four pies*"† per mensem, or "*one thousand*"‡ rupees per annum, or upwards, employed in his service, whether resident in any such house as aforesaid or not ; and

(c) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed and who desires to be assessed at that place.

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\* For notifications investing certain Political Officers with powers under this section in respect of persons residing out of British India, see Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895, p. 18.

† These words have been substituted for the original words "*forty-one rupees ten annas and eight pies*" by Act XI. of 1903, s. 2 (2).

‡ These have been substituted for the original words "*five hundred*," *ibid.*

**42.** An officer or person exercising all or any of the powers Trustees and agents to aforesaid may, by notice, require any furnish information as to person whom he has reason to believe to beneficiaries and principals. be a trustee, guardian, curator, committee, or agent, to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee, or agent.

**43.** An officer or person exercising all or any of the said Trustees, &c., to furnish powers may, by notice, require a trustee, information as to income. guardian, curator, committee, or agent, or a receiver or manager appointed by any Court in India, or a Court of Wards, Administrator-General, or Official Trustee, to furnish such returns of income liable to assessment under Part IV. as may be prescribed.

**44.** An officer or person exercising all or any of the said Obligation to furnish other powers may, at the instance of any person information. person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

**45.** A person required to furnish any information under section 41, section 42, section 43, or section 44, shall be legally bound to furnish Sections 176 and 177 of Penal Code to apply to requisitions for information. the same in such manner and within such time as may be specified in the requisition for the information.

**46. (1)** A notice under this Act may be served on the person therein named either by a prepaid letter Service of notices. addressed to the person and registered under Part III. of the Indian Post Office Act, 1866.\* or by the delivery or tender to him of a copy of the notice.

(2) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(3) If the notice is to be served otherwise than by registered letter, the service shall, whenever it may be practicable, be on the

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\* Act XIV. of 1866. But see now the Indian Post Office Act (VI. of 1898).

person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family.

(4) But when the person, member, or manager cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the serving-officer shall fix the copy of the notice on the outer door of the house in which the person, firm, or family therein named ordinarily resides or carries on business.

**47. (1)** When a company or firm has several places of business in territories subject to different Local Governments, the Governor-General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be the principal place of business.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to, and exercised by, such officers as the Governor-General in Council or the Local Government, as the case may be, appoints in this behalf.

**48.** Where a person is in respect of any period liable to the tax under this Act, he shall not in respect of that period be assessed\* to the capitation-tax, or the land-rate in lieu thereof, levied in Lower Burma† under the Burma Land and Revenue Act, 1876.‡

Saving in favour of payers of pandhari and capitation taxes.

\* Here certain words repealed by Act VI. of 1902, have been omitted.

† This reference to British Burma should now be read as referring to Lower Burma. See the Upper Burma Laws Act (XX. of 1886), s. 4.

‡ Act II. of 1876.

49. Every person deducting, retaining, or paying any tax in pursuance of this Act or of any arrangement under section 9, sub-section (2), in respect of income belonging to another person, is hereby indemnified for the deduction, retention, or payment thereof.

50. All powers conferred by, or conferable under, this Act may be exercised from time to time as occasion requires.

## THE FIRST SCHEDULE.

### ENACTMENTS REPEALED.

(See section 2.)

#### ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II. of 1878.	The Northern India License Act, 1878.	So much as has not been repealed.
Act No. VI. of 1880.	The Indian License Acts Amendment Act, 1880.	The whole.

#### ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III. of 1878.	The Madras License Act, 1878.	So much as has not been repealed.
Act No. III. of 1880.	An Act to amend Madras Act III. of 1878 as amended by Act VI. of 1880.	The whole.



THE FIRST SCHEDULE—*concluded.*

## ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Short title.	Extent of re- peal.
Act No. III. of 1878.	The Bombay License Act, 1878.	So much as has not been repealed.

## ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of re- peal.
Act No. II. of 1880.	The Bengal License Act, 1880.	The whole.

## THE SECOND SCHEDULE.

## SOURCES OF INCOME AND RATES OF TAX.

(See section 4.)

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

## PART I.

## SALARIES AND PENSIONS.

1. Any salary, annuity, pension, or gratuity paid in British India to or on behalf of any person residing in British India or serving on board a ship plying to or from British Indian ports, whether on account of himself or another person.

(a) If the income amounts to Rs. 2,000 per annum, or Rs. 166-10-8 per mensem, or upwards—five pies in the rupee.

(b) If the income is less than Rs. 2,000 per annum, or Rs. 166-10-8 per mensem—four pies in the rupee.

2. Any salary, annuity, pension, or gratuity paid by the Government, or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, to or on behalf of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty.

THE SECOND SCHEDULE—*continued.*

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

## PART II.

## PROFITS OF COMPANIES.

Profits of a Company

... { Five pies in the rupee on the whole, of the nett profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then on the whole of the nett profits so made during the year ending on the said thirty-first day of March.

THE SECOND SCHEDULE—*continued.*

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.

## PART III.

## INTEREST ON SECURITIES.

Interest becoming due on or after the first day of April 1886, and payable in British India, on—

(a) promissory notes, debentures, stock, or other securities of the Government of India (including securities of the Government of India whereon interest is payable out of British India by draft on any place in British India), or

(b) [*Repealed by Act XII. of 1891, Sch. I.*]

(c) debentures or other securities for money issued by or on behalf of a local authority or company.

Five pies in the rupee on such interest, unless the owner of the security produces a certificate signed by the Collector that his annual income from all sources is less than Rs. 1,000\* in which case no deduction shall be made from the interest, or unless he produces a like certificate that his income from all sources is less than Rs. 2,000, in which case the rate shall be four pies in the rupee.

\* These figures have been substituted for the original figures "500" by Act XI. of 1903, s. 2 (3).

THE SECOND SCHEDULE—*concluded.*

## PART IV.

## OTHER SOURCES OF INCOME.

FIRST COLUMN.	SECOND COLUMN.
Source of Income.	Rate of Tax.
Any source of income not included in Part I., Part II., or Part III., of this schedule.	<p>"(a)* If the annual income is assessed at—</p> <p>not less than Rs. 1,000, but less than Rs. 1,250, the tax shall be Rs. 20.</p> <p>not less than Rs. 1,250 but less than Rs. 1,500, the tax shall be Rs. 28.</p> <p>not less than Rs. 1,500 but less than Rs. 1,750, the tax shall be Rs. 35.</p> <p>not less than Rs. 1,750 but less than Rs. 2,000, the tax shall be Rs. 42."</p> <p>(b) If the annual income is assessed at Rs. 2,000, or upwards—five pies in the rupee on the income.</p>

\* This sub-head (a) has been substituted for the original by Act XI. of 1903, s. 2 (4).

## THE THIRD SCHEDULE.

## FORM OF PETITION.

(See section 25.)

TO THE COLLECTOR OF

The day of 18 .

The petition of A. B. of

SHEWETH as follows—

1.—Under Act No. II. of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April 18 .

2.—Your petitioner's income and profits accruing and arising from *[here specify petitioner's trade or other source or sources of income or profits, and the place or places at which such income or profits accrues or arise]* for the year ending the day of last were rupees [as will appear from the documents of which a list is presented herewith\*].

3.—Such income and profits actually accrued and arose during a period of months and days *[here state the exact number of months and days in which the income and profits accrued and arose]*.

4. During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly *[or that he may be declared not to be chargeable under the said Act]*.

(Signed) A. B.

## Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

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\* These words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope.

# ACT NO. VI. OF 1912.

## THE INDIAN LIFE ASSURANCE COMPANIES ACT, 1912.

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THE FIRST SCHEDULE.—  
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# ACT NO. VI. OF 1912.

## The Indian Life Assurance Companies Act, 1912.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

*Received the assent of the Governor-General on the 18th March, 1912.*

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*An Act to provide for the regulation of Life Assurance Companies.*

WHEREAS it is expedient to provide for the regulation of life assurance companies ; It is hereby enacted as follows :—

### *Preliminary.*

1. (1) This Act may be called the Indian Life Assurance Companies Act, 1912.  
Short title and extent.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

2. In this Act, unless there is anything repugnant in the subject or context,—  
Definitions.

(1) “actuary” means an actuary possessing such qualifications as may be prescribed by rules made by the Governor-General in Council :

(2) “chairman” means the person for the time being presiding over the board of directors or other governing body of a life assurance company :

(3) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction :

(4) “financial year” means each period of twelve months at the end of which the balance of the accounts of the life assurance company is struck, or, if no such balance is struck, then the calendar year :

(5) “life assurance business” means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life :

(6) “policy of assurance on human life” means any instrument by which the payment of money is assured on death (except:

death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life :

(7) "policy-holder" means the person who for the time being is the legal holder of the policy for securing the contract with the life assurance company :

(8) where a company grants annuities upon human life, "policy" includes the instrument evidencing the contract to pay such an annuity, and "policy holder" includes annuitant : and

(9) "Registrar" means any person who may be appointed by the Local Government to perform the duties of the Registrar under this Act.

3. Save as hereafter expressly provided, this Act shall apply to all persons or bodies of persons, whether corporate or unincorporate, (which persons and bodies of persons are hereafter referred to as life assurance companies) whether established before or after the commencement of this Act and whether established within or without British India, who carry on life assurance business within British India.

*Explanation.*—A company registered under the Indian Companies Act,\* 1882, which carries on life assurance business in any part of the world shall for the purposes of this section be deemed to be a company carrying on such business within British India.

*Exception.*—Nothing in this Act shall apply to any society to which the Provident Insurance Societies Act, 1912, applies, or to any Fund which the Governor General in Council may, by notification in the Gazette of India, exempt from the operation of this Act.

### *Deposits.*

4. (1) Every life assurance company shall, if established before the commencement of this Act, deposit, or, if established after such commencement, before it commences to carry on the business of life assurance, deposit and keep deposited with the Comptroller General, for and on

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\* Act VI. of 1882.

behalf of the Governor General in Council, Government securities, as defined by the Indian Securities Act,\* 1886, of the face value of twenty-five thousand rupees or of a face value equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, whichever is greater; and, until the company keeps deposited securities of the face value of two hundred thousand rupees, shall annually deposit and keep deposited in like manner like securities of a face value—

(a) equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, until the face value of the securities deposited exceeds one hundred thousand rupees;

(b) and thereafter equal in amount to one-third of the increase to the life assurance fund as shown in the revenue account for the last financial year:

Provided that a company may at any time deposit securities of a face value of two hundred thousand rupees or make up its deposit of securities to that value.

(2) The interest accruing due on the securities deposited under sub-section (1) shall be paid to the company.

(3) The deposit may be made by the subscribers of the memorandum of association of a company or any of them, in the name of a proposed company, and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the Registrar of Joint Stock Companies shall not issue a certificate of incorporation of the company under the Indian Companies Act,† 1882, until the deposit has been made.

(4) The deposit shall be deemed to form part of the life assurance fund of the company.

### *Accounts and Documents.*

5. In the case of a life assurance company transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance business, and

\* Act XIII. of 1886.

† Act VI. of 1882.

the said receipts shall be carried to and form a separate fund to be called the life assurance fund.

*Explanation.*—Nothing in this section shall be deemed to require any life assurance fund to be invested in separate investments from any other fund, but a separate balance-sheet as prescribed under section 7 shall be kept in respect of the life assurance fund.

*Exception.*—Nothing in this section shall apply to a life assurance company established before the commencement of this Act, by the terms of whose deed of settlement the whole of the profits of all the business carried on by the company are paid exclusively to the life policy-holders, and on the face of whose life policies the liability of the life assurance fund in respect of the other business distinctly appears.

6. The life assurance fund shall be as absolutely the security of the life policy-holders as though it belonged to a company carrying on no other business than life assurance business, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance, and shall not be applied, directly or indirectly, for any purposes other than those of life assurance.

*Exception.*—Nothing in this section shall affect the liability of the life assurance fund, in the case of a company established before the commencement of this Act, for contracts entered into by the company before such commencement.

Accounts and balance-sheets.

7. Every life assurance company shall, at the expiration of each financial year, prepare—

- (a) a revenue account for the year in the form or forms set forth in the First Schedule and applicable to the class or classes of business carried on by the company ;
- (b) a profit and loss account in the form set forth in the Second Schedule, except where the company carries on life assurance business only and no other business ;
- (c) a balance-sheet or balance-sheets in the form or forms set forth in the Third Schedule ;

- (d) a statement containing the name of every person who during the year was a member of the board of directors or other governing body or was manager or secretary or held any similar office by whatever name called.

8. (1) Every life assurance company shall once in every five years, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or bye-laws, cause an investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the form set forth in the Fourth Schedule.

(2) The provision of sub-section (1) regarding the making of an abstract shall also apply whenever at any other time an investigation into the financial condition of a life assurance company is made with a view to the distribution of profits, or whenever the results of any such investigation are made public.

9. In the case of a mutual life assurance company whose profits are allocated to members wholly or mainly by annual abatements of premium, the abstract of the report of the actuary on the financial condition of the company, prepared in accordance with the Fourth Schedule, may, notwithstanding anything in section 8, be made and returned at intervals not exceeding five years: Provided that, where such return is not made annually, it shall include particulars as to the rates of abatement of premiums applicable to different classes or series of assurances allowed in each year during the period which has elapsed since the previous return under the Fourth Schedule.

10. Every life assurance company shall, within three years from the commencement of this Act, and thereafter at the date to which the accounts of the company are made up for the purposes of the investigation prescribed by section 8, prepare a statement of its assurance business in the form set forth in the Fifth Schedule: Provided that, if the investigation is made annually by any company, the company may prepare such a statement at any time, so that it be made at least once in every five years.

**11. (1)** Every account, balance-sheet, abstract or statement hereinbefore required to be made shall be printed, and four copies thereof, one of which shall be signed by the chairman and two directors of the company, and by the principal officer of the company, and if the company has a managing director by the managing director, shall be deposited with the Governor General in Council within six months in the case of accounts and balance-sheets required by section 7, and within one year in other cases after the close of the period to which the account, balance-sheet, abstract or statement relates: Provided that, if in any case it is made to appear to the Governor General in Council that the circumstances are such that a longer period should be allowed, he may extend that period by such period as he may think fit.

(2) The Governor General in Council shall consider any document deposited in accordance with the provisions of subsection (1) and, if any such document appears to the Governor General in Council to be inaccurate or defective in any respect, the Governor General in Council may call upon the company to furnish a further statement correcting any such inaccuracies or supplying any such deficiency.

**12.** There shall be deposited with every revenue account and balance-sheet of a life assurance company every report on the affairs of the company submitted to the shareholders or policy-holders of the company in respect of the financial year to which the account and balance-sheet relate.

**13.** Where a life assurance company registered under the Indian Companies Act,\* 1882, in any year deposits its accounts and balance-sheet in accordance with the provisions of section 11, the company may, at the same time, send to the Registrar of Joint Stock Companies a copy of such accounts and balance-sheet; and, where such copy is so sent, it shall not be necessary for the company to file a balance-sheet with the Registrar of Joint Stock Companies as required by section 74 of the Indian Companies Act,\* 1882, and the copy of the accounts and balance-sheet so sent shall be dealt with in all respects as if it were a balance-sheet filed in accordance with that section.

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\* Act VI. of 1882.

**14.** A printed copy of the accounts, balance-sheet, abstract or statement last deposited shall, on the application of any shareholder or policy-holder of the company, be forwarded to him by the company by post or otherwise.

**15.** The accounts of every life assurance company shall be audited annually in such manner as the Governor General in Council may prescribe.

**16.** Every life assurance company which is not registered under the Indian Companies Act,\* 1882, shall keep a list of the names and addresses of its shareholders, and shall, on the application of any shareholder or policy-holder of the company, furnish to him a copy of such list on payment of a sum not exceeding two annas for every hundred words required to be copied.

**17.** Every life assurance company which is not registered under the Indian Companies Act,\* 1882, shall cause a sufficient number of copies of its deed of settlement or other instrument constituting the company to be printed, and shall, on the application of any shareholder or policy-holder of the company, furnish to him a copy of such deed of settlement or other instrument on payment of a sum not exceeding one rupee.

**18.** Where any notice, advertisement or other official publication of a life assurance company contains a statement of the amount of the authorized capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

**19.** (1) Every life assurance company, constituted outside British India which establishes a place of business within British India, or appoints an agent in British India with the object of obtaining life assurance business shall, within three months from the establishment of the place of business or the appointment of such agent, file with the Registrar—

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\* Act VI. of 1882.

- (a) a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof;
- (b) a list of the directors of the company;
- (c) the names and addresses of some one or more persons resident in British India authorized to accept on behalf of the company service of process and any notices required to be served on the company;

and, in the event of any alteration being made in any such instrument or in the list of directors or in the names and addresses of such persons as aforesaid, the company shall, within such time as the Governor General in Council may prescribe, file with the Registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) There shall be paid to the Registrar for registering any document, required by this section to be filed, a fee of five rupees or such smaller fee as the Governor General in Council may prescribe.

### *Amalgamation or Transfer.*

**20.** (1) Where it is intended to amalgamate two or more life assurance companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the court, by petition, to sanction the proposed arrangement.

(2) Before any such application is made to the Court—

- (a) notice of the intention to make the application shall be published in the Gazette of India and in the local official Gazette of the Province in which the principal place of business of the company is situate at least two months before the application is made;
- (b) a statement of the nature of the amalgamation or transfer, as the case may be together with an abstract containing the material facts embodied



in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy-holder of each company; and

- (c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the last publication of the notice.

(3) The Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(4) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy-holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from the amalgamation or transfer.

(5) No life assurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

**21.** Where an amalgamation takes place between any life insurance companies, or where any amalgamation or transfer of life assurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within one month from the date of the completion of the amalgamation or transfer, deposit with the Governor-General in Council—

- (a) certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer; and
- (b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected; and

- (c) certified copies of the actuarial or other reports upon which that agreement or deed is founded; and
- (d) a declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.

### *Winding up.*

**22.** The Court may order the winding up of a life assurance company, in accordance with the Indian Companies Act,\* 1882, and the provisions of that Act shall apply accordingly, subject, however, to the modification that the company may be ordered to be wound up—

- (a) on the petition of ten or more policy-holders:

Provided that such a petition shall not be presented except by the leave of the Court, and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court, and until security for costs for such amount as the Court may think reasonable has been given; or

- (b) on application made on behalf of the Governor General in Council, showing that from a consideration of the documents deposited with him under the provisions of this Act it appears to him that the company is insolvent.

**23.** (1) Where a life assurance business or any part of the life assurance business of a life assurance company has been transferred to another company under an arrangement in pursuance of which the first-mentioned company (in this section called the

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\* Act VI. of 1882.

subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the court, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to the companies being wound up as if they were one company.

(2) The commencement of winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.

(3) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

(4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.

(6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

**24.** Where a life assurance company is being wound up Valuation of annuities and by the Court, or subject to the super-policies. vision of the Court, or voluntarily, the value of a policy or of a liability under a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities provided by the Sixth Schedule.

**25.** The rules in the Sixth Schedule shall be of the same force, and may be repealed, altered or Rules of valuation. amended as if they were rules made in pursuance of section 254 of the Indian Companies Act, 1882,\* and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of life assurance companies.

**26.** The Court, in the case of a life assurance company Power to Court to reduce which has been proved to be unable to contracts. pay its debts, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as it thinks just, in place of making a winding-up order.

*Special Provisions relating to Accounts and Documents.*

**27.** The Governor General in Council may direct any Custody and inspection of documents deposited with this Act, or certified copies thereof, to be Governor General in Council. kept by the Registrar or by any other officer appointed in this behalf, and any such documents and copies shall be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Governor-General in Council may direct.

**28.** The Governor-General in Council shall annually Accounts etc., to be pub- publish in the Gazette of India and lished. cause to be published in the local official Gazette of the Province in which the life assurance company has its principal place of business the accounts, balance-sheets, abstracts, statements and other documents under this Act, or purporting to be under this Act, deposited with him during the preceding year, except reports on the affairs of life assurance companies submitted to the share-holders or policy-

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\* Act VI. of 1882.

holders thereof, and may append to such accounts, balance-sheets, abstracts, statements or other documents any note of the Governor-General in Council thereon, and any correspondence in relation thereto.

**29.** Every document deposited under this Act with the Governor-General in Council, and certified by the Registrar or by any person appointed in that behalf by the Governor-General in Council to be a document so deposited, shall be deemed to be a document so deposited.

**30.** Every document purporting to be certified by the Registrar, or by any person appointed in that behalf by the Governor-General in Council, to be a copy of a document so deposited, shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document unless some variation between it and the original document be proved.

**31.** The Governor-General in Council may, on the application or with the consent of a life assurance company, alter the forms contained in the Schedules to this Act as respects that company, for the purpose of adapting them to the circumstances of that company.

*Companies carrying on business in the United Kingdom.*

**32, (1)** An assurance company which carries on life assurance business in the United Kingdom in accordance with the Assurance Companies Act,\* 1909, may, if carrying on life assurance business in British India before the commencement of this Act, within three months of such commencement, or, in any other case, before it commences to carry on life assurance business in British India, apply to the Governor-General in Council for a declaration that it so carries on such business in the United Kingdom.

**(2)** A company applying under the provisions of subsection (1) shall furnish, at the time of its application or at such further time as the Governor-General in Council may prescribe,

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\* 9 Edw. VII, cap. 49.

such evidence as he may direct of the facts alleged in its application.

(3) Where the Governor-General in Council is satisfied that a life assurance company applying as aforesaid is a life assurance company which carries on business in the United Kingdom in accordance with the Assurance Companies Act,\* 1909, he shall, by notification in the Gazette of India, make a declaration to that effect, and shall cause such notification to be republished in the local official Gazette of the Province where the Company has or proposes to have its principal place of business.

33. Where the Governor-General in Council has notified a declaration in accordance with the provisions of section 32 in respect of a life assurance company, nothing in section 4, section 5, sections 7 to 12, sections 15, 20, 21 or 37 shall apply to the company :

Provided that—

- (1) the company shall deposit with the Governor-General in Council, in the manner prescribed in section 11, copies of every account balance-sheet, abstract, statement or other document which the company is required by the Assurance Companies Act,\* 1909, to deposit at the Board of Trade;
- (2) if, at any time, a company in respect of which a declaration has been notified under section 32 ceases to carry on life assurance business in the United Kingdom in accordance with the provisions of the Assurance Companies Act, 1909, it shall; if it continues to carry on life assurance business in British India, be subject to all the provisions of this Act from the date it ceased to carry on such business in the United Kingdom in accordance with the said Act.

#### *Penalties and Procedure.*

34. Any life assurance company which makes default in complying with any of the requirements of this Act, and every director, manager

Penalty for non-compliance with Act.

\* 9 Edw. VII., cap. 49.

or secretary, or other officer or agent of the company who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees, or, in the case of a continuing default, with fine which may extend to five hundred rupees for every day during which the default continues; and, if default continues for a period of three months after notice of default by the Governor-General in Council (which notice shall be published in one or more newspapers as the Governor-General in Council may, upon the application of one or more policy-holders or shareholders, direct), the default shall be a ground on which the Court may order the winding up of the company, in accordance with the Indian Companies Act,\* 1882.

**35.** If any account, balance-sheet, abstract, statement or other document required by this Act is false or statements, etc. in any particular to the knowledge of any person who signs it, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

**36.** No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

#### *Miscellaneous.*

**37. (1)** The Governor-General in Council may appoint one or more inspectors to examine into the affairs of any life assurance company, and to report thereon in such manner as he may direct—

(i) in the case of a life assurance company which is not registered under the Indian Companies Act,\* 1882, upon the application—

- (a) of shareholders being in number not less than one-fifth of the whole number of persons for the time being entered on the list of shareholders kept in accordance with the provisions of section 16; or
- (b) of twenty or more policy-holders owning policies of an aggregate value of not less than twenty thousand rupees;

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\* Act VI. of 1882.

- (ii) in any case where a life assurance company has failed to furnish a further statement when required to do so under the provisions of section 11, sub-section (2), or where the Governor-General in Council is of opinion that any such further statement is insufficient or unsatisfactory.

(3) On an appointment being made under sub-section (1) the provisions of section 84 of the Indian Companies Act,\* 1882, shall apply to the examination made by such inspectors.

**38.** Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy :

Service of notices.

Provided that where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

**39.** (1) The Governor-General in Council may make rules to carry out the purposes of this Act.

Powers to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the qualifications to be possessed by actuaries, auditors and inspectors under this Act, and the manner in which the accounts of life assurance companies shall be audited ;

(b) prescribe the time within and the form in which notice of alteration of the particulars specified in section 19 of the Act shall be filed with the Registrar ;

(c) subject to the provisions of this Act, prescribe the fees payable thereunder.

(3) All rules made under this Act shall be published in the Gazette of India, and on such publication, shall have effect as if enacted in this Act.



**40.** The Governor-General in Council may, by notification in the Gazette of India, and subject to such conditions and restrictions as he thinks fit, delegate to any Local Government all or any of the powers (other than the power to make rules under section 39) conferred on him by this Act.

**41.** The Governor-General in Council may, by notification in the Gazette of India, and subject to such restrictions and conditions as he thinks fit, exempt any life assurance company from all or any of the provisions of this Act.

**42.** In section 131 of the Indian Companies Act,\* 1882, the words from "In the case of a life assurance company" to "unable to pay its debts" are hereby repealed.

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\* Act VI. of 1882.

## THE FIRST SCHEDULE.

(See section 7.)

REVENUE ACCOUNTS OF THE \_\_\_\_\_ FOR THE YEAR ENDING \_\_\_\_\_  
 (A)—Life Assurance Account.

	Rs.		Rs.
Amount of life assurance fund at the beginning of the year.		Dividends payable on 19 for the year ending 19 (This is only to be stated here by companies not supplying a Profit and Loss account). Claims under policies paid and outstanding— By death ... ..	
		By maturity ... ..	
Premiums ... ..		Surrenders, including surrenders of bonus additions. Annuities ... .. Bonuses in cash ... .. Bonuses in reduction of premiums Expenses of management:— Commission ... .. Agents' and Canvassers' allowances. Salaries, etc. (other than to Agents and Canvassers). Travelling expenses ... .. Directors' fees ... .. Auditors' fees... .. Medical fees ... ..	
Consideration for annuities granted* (see Note 1).			

\* NOTE 1.—Companies having a separate annuity fund with investments separate from those of the life assurance fund to return the particulars of their annuity business in a separate statement, in Form B of this Schedule.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

NOTE 3.—If any sum has been deducted from the expenses of management account, and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above account.

## THE FIRST SCHEDULE—(Continued.)

	Rs.	Rs.		Rs.
Interests, dividends and rents.			Rents for offices belonging to and occupied by the company.	
Less income-tax thereon ...			Rents of other offices occupied by the company.	
			Law charges ... ..	
			Advertising ... ..	
			Printing and stationery	
Other receipts (accounts to be specified).			Other expenses of management (accounts to be specified).	
			Other payments (accounts to be specified).	
			Amount of life assurance fund at the end of the year, as per Third Schedule.	
Rs. ...			Rs. ...	

(B) Revenue Account applicable to annuity business of those companies having a separate annuity fund, the investments of which are kept separate from those of the life assurance fund.

	Rs.		Rs.
Amount of annuity fund at the beginning of the year.		Annuities ... ..	
Consideration for annuities granted		Surrenders ... ..	
Interest, dividends and rents.	Rs.	Expenses of management:—	
Less income tax thereon ...		Commission ... ..	
		Other expenses (to be specified)	
Other receipts' ... ..		Other payments (accounts to be specified).	
		Amount of annuity fund at the end of the year as per Balance-sheet.	
Rs. ....		Rs. ...	

NOTE.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

## THE FIRST SCHEDULE—(continued.)

(C) General Revenue Account applicable to all classes of business other than life assurance and annuity transactions.

	Rs.		Rs.
Amount of funds at the beginning of the year.		Claims less re-assurances (accounts to be specified).	
Premiums (accounts to be specified)		Expenses of management:—	
	Rs.	Commission ... ..	
Interests, dividends and rents.		Other expenses (to be specified.)	
Less income tax thereon ...		Losses (accounts to be specified)	
Profits (accounts to be specified)...		Other payments (accounts to be specified.)	
Other receipts (to be specified) ...		Amount of funds at the end of the year as per Balance-sheet.	
Rs. ...		Rs. ...	

NOTE 1.—All the items in the above account to be exclusive of life assurance and annuity transactions.

NOTE 2.—Items in this account to be net amounts after deduction of the amounts paid and received in respect of re-assurances of the company's risks.

## THE FIRST SCHEDULE—(concluded.)

(D)—Statement to be submitted along with the Revenue Account by all life assurance companies.

Class of Policy.	TOTAL NEW LIFE ASSURANCES COMPLETED IN INDIA DURING THE YEAR 19 .			PORTION THEREOF REASSURED.		
	Sum Assured.	Annual Premium.	Single Premium.	Sum Assured.	Annual Premium.	Single Premium.
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Whole life ... ..						
Whole life by limited payments.						
Endowment assurances						
Pure endowments ...						
Term assurances ...						
Other classes ... ..						
TOTAL ...						

State also :—

New annuities (state number and annual amount).

Total sums assured and bonuses (less reassurances) remaining in force at end of year 19 on lives of residents in India.

Number and amount of annuities (less reassurances) remaining in force at end of year 19 on lives of residents in India.

Largest sum for which the company has granted an assurance on any one life during the year, after deduction of any portion reassured.

Statement of the total investments in India of the life assurance and annuity funds.

## THE SECOND SCHEDULE.

(See section 7.)

PROFIT AND LOSS ACCOUNT OF THE \_\_\_\_\_ FOR THE YEAR ENDING 19 .

	Rs.		Rs.
Balance of last year's account ...		Dividends and bonuses to share-holders payable on 19 , for the year ending 19 .	
Interest and dividends not carried to other accounts...	Rs.	Expenses not charged to other accounts.	
Less income-tax thereon		Loss realised (accounts to be specified).	
Profit realized (accounts to be specified).		Other payments (accounts to be specified).	
Other receipts (accounts to be specified).		Balance as per Third Schedule ... ..	
Rs. ...		Rs. ....	

## THE THIRD SCHEDULE.

(See section 7.)

(A) BALANCE-SHEET \_\_\_\_\_ OF THE \_\_\_\_\_ ON THE \_\_\_\_\_ 19 .

LIABILITIES.	Rs.	Rs.	ASSETS.	Rs.
Life assurance fund—			Assets of life assurance fund as per separate balance-sheet (if any).	
Outstanding liabilities of life assurance fund.			Assets of annuity fund as per separate balance-sheet (if any).	
Annuity fund (if any) as per separate balance-sheet.			Assets of funds other than those shown in the above mentioned balance-sheets.	
Outstanding liabilities of annuity fund.			Mortgages on property within India.	
Shareholders' capital paid up (if any)			Do. do. out of India.	
Profit and Loss account (if any)			Loans on public rates ...	
Funds contained in General Revenue Account (if any) [Schedule I (c).]			Do. life interests and reversions.	
Other sums owing by the Company.			Do. stocks and shares	
(Accounts to be specified and stated separately under each class of business).			Do. company's policies within their surrender values.	
			Do. personal security Investments—	
			Deposit with the Comptroller General (securities to be specified).	
			Indian Government securities	
			British and Colonial Government securities.	
			Foreign Government securities	
			Indian Municipal and Provincial securities.	
			British and Colonial and Provincial securities.	
			Foreign and Provincial securities.	
			Bonds, Debentures, stocks and other securities whereon interest is guaranteed by the Indian Government.	

## THE THIRD SCHEDULE—(continued.)

LIABILITIES.	Rs.	ASSETS.	Rs.
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government.	
		Ordinary stocks and shares of any Indian Presidency Bank.	
		Debentures of any Railway in India.	
		Debentures of any Railway out of India.	
		Preference or guaranteed shares of any Railway in India.	
		Preference or guaranteed shares of any Railway out of India.	
		Ordinary stocks and shares of any Railway in India.	
		Ordinary stocks and shares of any Railway out of India.	
		House property in India.	
		House property out of India.	
		Freehold and leasehold ground rents and rent charges in India.	
		Life interests and reversions in India.	



## THE THIRD SCHEDULE—(continued.)

LIABILITIES.	Rs.	ASSETS.	Rs.
		Life interests and reversions out of India.	
		Other investments in India (to be specified).	
		Other investments out of India (to be specified).	
		Agents' balances ... ..	...
		Outstanding premiums*... ..	...
		Do. interests, dividends and rents.*	
		Interest accrued but not payable	
		Bills receivable ... ..	...
		Cash :—	
		On deposit ... ..	...
		In hand and on current account	
		Other assets (to be specified) ...	...
Rs. ...		Rs. ...	

\* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws, in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—The balance-sheet must state how the values of the Stock Exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 3.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 4.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

## THE THIRD SCHEDULE—(continued.)

(B) BALANCE-SHEET OF THE LIFE ASSURANCE FUND \_\_\_\_\_ ON  
THE \_\_\_\_\_ 19 , TO BE COMPLETED BY COMPANIES  
DOING BUSINESS OTHER THAN LIFE ASSURANCE FOR WHICH THEY  
HAVE SEPARATE FUNDS.

LIABILITIES.	Rs.	ASSETS.	Rs.
Life assurance fund.		Mortgages on property within India.	
Claims admitted or intimated* but not paid.		Mortgages on property out of India.	
Other sums owing by the company* (under this class of business).		Loans on public rates ... ..	
		Do. life interests and reversions.	
		Do. stocks and shares ...	
		Do. company's policies within their surrender values ... ..	
		Do. personal security ...	
		Investments—	
		Deposit with the Comptroller General (securities to be specified).	
		Indian Government securities	
		British and Colonial Government securities.	
		Foreign Government securities.	
		Indian Municipal and Provincial securities.	
		British and Colonial and Provincial securities.	
		Foreign and Provincial securities.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the Indian Government.	

\* These items are or have been included in the corresponding items in the First Schedule.

## THE THIRD SCHEDULE—(continued.)

LIABILITIES.	Rs.	ASSETS.	Rs.
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by the British or any Colonial Government.	
		Bonds, debentures, stocks and other securities whereon interest is guaranteed by any Foreign Government.	
		Ordinary stocks and shares of any Indian Presidency Bank.	
		Debentures of any Railway in India..	
		Debentures of any Railway out of India.	
		Preference or guaranteed shares of any Railway in India.	
		Preference or guaranteed shares of any Railway out of India.	
		Ordinary stocks and shares of any Railway in India.	
		Ordinary stocks and shares of any Railway out of India.	
		House property in India.	
		Do. do. out of India.	
		Freehold and leasehold ground rents and rent-charges in India.	
		Life interests and reversions in India.	
		Life interests and reversions out of India.	
		Other investments in India (to be specified).	
		Other investments out of India (to be specified).	
		Agents' balances ... ..	

## THE THIRD SCHEDULE—(concluded.);

LIABILITIES.	Rs.	ASSETS.	Rs.
		Outstanding premiums* ... ..	
		Do. interests, dividends and rents.*	
		Interest accrued but not payable*	
		Bills receivable ... ..	
		Cash :—	
		On deposit ... ..	
		In hand and on current ac- count.	
		Other assets (to be specified) ...	
Rs. ...			Rs. ...

\* These items are or have been included in the corresponding items in the First Schedule.

NOTE 1.—When part of the assets of the company are specifically deposited under local laws, in various places out of India, as security to holders of life assurance policies there issued, each such place and the amount compulsorily lodged therein must be specified.

NOTE 2.—A balance-sheet in the above form must be rendered in respect of the annuity fund if the investments of that fund are distinct from those of the life assurance fund.

NOTE 3.—The balance-sheet must state how the values of the Stock Exchange securities are arrived at, and on the occasions when a statement respecting valuation under the Fourth Schedule is made, a certificate must be appended, signed by the same persons as signed the balance-sheet, to the effect that in their belief the assets set forth in the balance-sheet are in the aggregate fully of the value stated therein, less any investment reserve fund taken into account.

NOTE 4.—A certificate must be appended hereto, signed by the same persons as signed the balance-sheet (Form A), and by the auditor, to the effect that no part of any such fund has been applied, directly or indirectly, for any purpose other than the class of business to which it is applicable.

NOTE 5.—Companies having investments with any uncalled liability shall state separately the full amount thereof.

NOTE 6.—Particulars must be given of all loans, including temporary advances, except loans on policies within their surrender values, made at any time during the year to any director or officer of a company, or to any other company in which any of the said directors or officers may hold the position either of director or of officer.

## THE FOURTH SCHEDULE.

(See sections 8 and 9.)

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE \_\_\_\_\_, TO BE MADE AND SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The general principles adopted in the valuation, and the method followed in the valuation of particular classes of assurances including a statement of the method by which the net premium have been arrived at, and whether these principles were determined by the instrument constituting the company or by its regulation, or by bye-laws, or how otherwise; together with a statement of the manner in which policies on under average lives are dealt with.

3. The table or tables of mortality used in the valuation. In cases where the tables employed are not published, specimen policy values are to be given, at the rate of interest employed in the valuation, in respect of whole-life assurance policies effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of five years, respectively; with similar specimen policy values in respect of endowment assurance policies, according to age at entry, original term of policy and duration.

4. The rate or rates of interest assumed in the calculations.

5. The actual proportion of the annual premium income (if any), reserved as a provision for future expenses and profits, separately specified in respect of assurances with immediate profits, with deferred profits, and without profits. (If none, state how this provision is made.)

6. The consolidated revenue-account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed. No return under this heading will be required where a statement under this schedule is deposited annually.)

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of

## THE FOURTH SCHEDULE—(continued.)

policies, the amount assured and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company with the amount of surplus or deficiency. (These returns to be made in the forms annexed.)

8. The principles upon which the distribution of profits among the share holders and policy-holders is made, and whether these principles were determined by the instrument constituting the company or by its regulations or bye-laws, or how otherwise, and the number of years' premiums to be paid before a bonus (a) is allotted, and (b) vests.

9. The results of the valuation, showing—

(1) the total amount of profit made by the company, allocated as follows:—

(a) among the policy-holders with immediate participation, and the number and amount of the policies which participated;

(b) among policy-holders with deferred participation, and the number and amount of the policies which participated;

(c) among the share holders;

(d) to reserve funds, or other accounts;

(e) carried forward unappropriated;

(2) specimens of bonuses allotted to whole life assurance policies for Rs. 1,000 effected at the respective ages of 20, 30, 40 and 50, and having been respectively in force for 5 years, 10 years, and upwards at intervals of 5 years respectively, together with the amounts apportioned under the various modes in which the bonus might be received; with similar specimen bonuses and particulars in respect of endowment assurance policies, according to age at entry, original term of policy, and duration.

## THE FOURTH SCHEDULE—(continued.)

(FORM REFERRED TO UNDER HEADING No. 6 IN FOURTH SCHEDULE.)

Consolidated Revenue Account of the \_\_\_\_\_ for \_\_\_\_\_ years  
commencing \_\_\_\_\_ and ending \_\_\_\_\_

	Rs.		Rs.
Amount of life assurance fund at the beginning of the period ...		Claims under policies paid and outstanding:—	Rs.
Premiums ... ..		By death ...	
Consideration of annuities granted		By maturity ...	
	Rs.		
Interest, dividends and rents		Surrenders ... ..	
Less income-tax thereon		Annuities ... ..	
		Bonuses in cash ... ..	
Other receipts (accounts to be specified) ... ..		" " reduction of premiums ...	
		Commission... ..	
		Expenses of management ...	
		Other payments (accounts to be specified) ... ..	
		Amount of life assurance fund at the end of the period as per Third Schedule ... ..	
	Rs. ...		Rs. ...

NOTE.—If any sum has been deducted from the expenses of management account and taken credit for in the balance-sheet as an asset, the sum so deducted to be separately shown in the above statement.

## THE FOURTH SCHEDULE—(continued.)

(FORM REFERRED TO UNDER HEADING N. 7 IN FOURTH SCHEDULE.)

Summary and valuation of the policies of the \_\_\_\_\_ as  
61 \_\_\_\_\_ at .

	PARTICULARS OF THE POLICIES FOR VALUATION.				VALUATION.			
	Number of Policies,	Sums assured and bonuses,	Office yearly premiums,	Net yearly premiums.	Value by the		Table,	
					interest	per cent.		
					Sums assured and bonuses,	Office yearly premiums.	Net yearly premiums.	Net liability.
<b>ASSURANCES.</b>								
<i>I.—With immediate participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified) ...								
Extra premiums payable ...								
<i>II.—With deferred participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified) ...								
Extra premiums payable ...								
Total assurances with profits ...								
<i>III.—Without participation in profits.</i>								
For whole term of life ...								
Other classes (to be specified) ...								
Extra premiums ...								
Total assurances without profits								
Total assurances ...								
Deduct re-assurances (to be specified according to class in a separate statement).								
Net amount of assurances ...								
Adjustments, if any (to be separately specified) ...								
<b>ANNUITIES ON LIVES.</b>								
Immediate ...								
Other classes (to be specified) ...								
Total of the results ...								



## THE FOURTH SCHEDULE—(continued.)

(FORM REFERRED TO UNDER HEADING NO. 7 IN FOURTH SCHEDULE.)  
*Valuation Balance-Sheet of \_\_\_\_\_ as at \_\_\_\_\_ 19 .*

DR.	CR.
Rs.	Rs.
To net liability under life assurance and annuity transactions (as per summary statement provided in Fourth Schedule).	By life assurance and annuity funds (as per Balance-sheet under Third Schedule).
To surplus, if any ...	By deficiency, if any ...

NOTE 1.—The term “extra premium” in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

NOTE 2.—Separate returns and valuation results must be furnished in respect of classes of policies valued by different tables of mortality, or at different rates of interest, also for business at other than European rates.

NOTE 3.—In cases also where separate valuations of any portion of the business are required under local laws in places outside British India, a summary statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums and the total net liability on the bases as to mortality and interest adopted in each such place, with a statement as to such bases respectively.

## THE FIFTH SCHEDULE.

*(See section 10.)*

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY BUSINESS OF  
THE                      ON THE                      19   , TO  
BE SIGNED BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurances corresponding to the statements in respect of assurances are to be given throughout.) Separate statements are to be furnished in the replies to all the headings under this Schedule for business at other than European rates.

1. The published table or tables of premiums for assurances for the whole term of life and for endowment assurances which are in use at the date above-mentioned.

2. The total amount assured on lives for the whole term of life which are in existence at the date above-mentioned, distinguishing the portions assured with immediate profits, with deferred profits, and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages, the basis of division as to immediate and deferred profits being stated.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses in respect of the respective assurances mentioned under Heading No. 2, distinguishing ordinary from extra premiums. A separate statement is to be given of premiums payable for a limited number of years, classified according to the number of years' payments remaining to be made.

4. The total amount assured under endowment assurances, specifying sums assured and office premiums separately in respect of each year in which such assurances will mature for payment. The reversionary bonuses must also be separately specified, and the sums assured with immediate profits, with deferred profits, and without profits separately returned.

5. The total amount assured under classes of assurance business, other than assurances dealt with under questions 2 and 4, distinguishing the sums assured under each class and stating separately the amount assured with immediate profits, with deferred

THE FIFTH SCHEDULE—(*concluded.*)

profits, and without profits, and the total amount of reversionary bonuses.

6. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under Heading No. 5, distinguishing ordinary from extra premiums.

7. The total amount of premiums which has been received from the commencement upon pure endowment policies which are in force at the date above-mentioned.

8. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life, and distinguishing male and female lives.

9. The amount of all annuities on lives other than those specified under Heading No. 8, distinguishing the amount of annuities payable under each class, and the amount of premiums annually receivable.

10. The average rate of interest yielded by the assets, whether invested or uninvested, constituting the life assurance fund of the company, calculated upon the mean fund of each year during the period since the last investigation, without deduction of income-tax.

It must be stated whether or not the mean fund upon which the average rate of interest is calculated includes reversionary investments.

11. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of the application of such method to policies of different standing and taken out at various interval ages from the youngest to the oldest.

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## THE SIXTH SCHEDULE.

(See sections 24 and 25.)

## RULES FOR VALUING ANNUITIES, LIFE POLICIES AND LIABILITIES.

*Rule for valuing an annuity.*

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table of mortality as the Court may direct.

*Rule for valuing a policy.*

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium as according to said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

*Rule for valuing a liability.*

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, is to ascertain the value of the liability of the company to each such person, and give notice of such value to such persons in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

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# ACT NO. IV. OF 1912.

## The Indian Lunacy Act, 1912.

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# ACT NO. IV. OF 1912.

## The Indian Lunacy Act, 1912.

PASSED BY THE GOVERNOR GENERAL IN COUNCIL.

*Received the assent of the Governor General on the 16th  
March 1912.*

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*An Act to consolidate and amend the law relating to Lunacy.*

WHEREAS it is expedient to consolidate and amend the law relating to lunacy; It is hereby enacted as follows:—

### PART I.

#### PRELIMINARY.

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#### CHAPTER I.

Short title and extent.

1. (1) This Act may be called the Indian Lunacy Act, 1912.

(2) It extends to the whole of British India, including British Baluchistan, the Santhal Parganas, and the Pargana of Spiti.

2. Nothing contained in Part II. shall be deemed to affect the powers of any High Court which is or hereafter may be established under

Savings.  
the Indian High Courts Acts,\* 1861 to 1911, over any person found to be a lunatic by inquisition or over the property of such lunatic, or the rights of any person appointed by such Courts as guardian of the person or manager of the estate of such lunatic.

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) "asylum" means an asylum for lunatics established or licensed by Government :

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\* 24 & 25 Vict., c. 100, to 1 & 2 Geo. 5, c. 18.

(2) "cost of maintenance" in an asylum includes the cost of lodging, maintenance, clothing, medicine and care of a lunatic and any expenditure incurred in removing such lunatic to and from an asylum :

(3) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns :

(4) "criminal lunatic" means any person for whose confinement in, or removal to an asylum, jail or other place of safe custody an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure,\* 1898, or of section 30 of the Prisoners Act,† 1900 :

(5) "lunatic" means an idiot or person of unsound mind :

(6) "Magistrate" means a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or a Magistrate of the first class specially empowered by the Local Government to perform the functions of a Magistrate under this Act :

(7) "medical officer" means a gazetted medical officer of Government, and includes a medical practitioner declared by general or special order of the Local Government to be a medical officer for the purposes of this Act :

(8) "medical practitioner" means a holder of a qualification to practise medicine and surgery which can be registered in the United Kingdom in accordance with the law for the time being in force for the registration of medical practitioners, and includes any person declared by general or special order of the Local Government to be a medical practitioner for the purposes of this Act :

(9) "prescribed" means prescribed by this Act or by rule made there-under :

(10) "reception order" means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition :

(11) "relative" includes any person related by blood, marriage or adoption : and

(12) "rule" means a rule made under this Act.

\* Act V. of 1898.

† Act III. of 1900.

## PART II.

### RECEPTION, CARE AND TREATMENT OF LUNATICS.

#### CHAPTER II.

##### RECEPTION OF LUNATICS.

4. (1) No person other than a criminal lunatic or a lunatic Reception of persons in so found by inquisition shall be received asylum. or detained in an asylum without a reception order save as provided by sections 8, 16 and 98:

Provided that any person in charge of an asylum may, with the consent of two of the visitors of such asylum, which consent shall not be given except upon a written application from the intending boarder, receive and lodge as a boarder in such asylum any person who is desirous of submitting himself to treatment.

(2) A boarder received in an asylum under the proviso to sub-section (1) shall not be detained in the asylum for more than twenty-four hours after he has given to the person in charge of the asylum notice in writing of his desire to leave such asylum.

##### *Reception Orders on petition.*

5. (1) An application for a reception order shall be made Application for reception by petition accompanied by a statement of particulars to the Magistrate within the local limits of whose jurisdiction the alleged lunatic ordinarily resides. shall be in the form prescribed and shall be supported by two medical certificates on separate sheets of paper, one of which certificates shall be from a medical officer.

(2) If either of the medical certificates is signed by any relative, partner or assistant of the lunatic or of the petitioner, the petition shall state the fact, and, where the person signing is a relative, the exact manner in which he is related to the lunatic or petitioner.

(3) The petition shall also state whether any previous application has been presented for an inquiry into the mental capacity of the alleged lunatic in any Court; and if such application has been made, a certified copy of the order made thereon shall be attached to the petition.

(4) No application for a reception order shall be entertained in any area outside the Presidency-towns unless the Local Government has, by notification in the local official Gazette, declared such area as an area in which reception orders may be made.

Application by whom to be presented.

6. (1) The petition shall be presented, if possible, by—

(a) the husband or wife of the alleged lunatic, or

(b) by any other relative of his.

(2) If the petition is not so presented, it shall contain a statement of the reasons why it is not so presented, and of the connection of the petitioner with the alleged lunatic, and the circumstances under which he presents the petition.

(3) No person shall present a petition unless he has attained the age of majority as determined by the law to which he is subject, and has, within fourteen days before the presentation of the petition, personally seen the said lunatic.

(4) The petition shall be signed and verified by the petitioner and the statement of prescribed particulars by the person making such statement.

7. (1) Upon the presentation of the petition the Magistrate shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificates.

(2) If he considers that there are grounds for proceeding further, he shall personally examine the alleged lunatic unless for reasons to be recorded in writing he thinks it unnecessary or inexpedient so to do.

(3) If he is satisfied that a reception order may properly be made forthwith, he may make the same accordingly.

(4) If he is not so satisfied, he shall fix a date (notice whereof shall be given to the petitioner and to any other person to whom in the opinion of the Magistrate notice should be given) for the consideration of the petition, and he may make such further or other enquiries of or concerning the alleged lunatic as he thinks fit.

8. Upon the presentation of the petition the Magistrate may make such order as he thinks fit for the Detention of alleged lunatic pending enquiry. suitable custody of the alleged lunatic pending the conclusion of the inquiry.

9. The petition shall be considered in private in the presence of the petitioner, the alleged lunatic (unless the Magistrate in his discretion otherwise directs), any person appointed by the alleged lunatic to represent him and such other persons as the Magistrate thinks fit.

*Consideration of petition.*

10. (1) At the time appointed for the consideration of the petition, the Magistrate may either make a reception order or dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the alleged lunatic if found to be of unsound mind, or otherwise, as he thinks fit.

*Order.*

(2) If the petition is dismissed, the Magistrate shall record in writing his reasons for dismissing the same, and shall deliver or cause to be delivered to the petitioner a copy of such order.

11. No reception order shall be made under section 7 or section 10, save in the case of a lunatic who is dangerous and unfit to be at large, unless—

*Further provisions as to reception orders on petition.*

- (a) the Magistrate is satisfied that the person in charge of an asylum is willing to receive the lunatic, and
- (b) the petitioner or some other person engages in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the lunatic.

*Reception orders otherwise than on petition.*

12. When any European who is subject to the provisions of the Army Act\* has been declared a lunatic in accordance with the provisions of the military regulations in force for the time being, and it appears to any administrative medical officer that he should be removed to an asylum, such administrative medical officer may, if he thinks fit, make a reception order under his hand for the admission of the said lunatic into any asylum which has been duly authorized for the purpose by the Governor General in Council.

*Reception order in case of lunatic soldier.*

17. All acts which the Magistrate is authorized or required to do by sections 14, 15 or 16 may be done in the Presidency towns or Rangoon by the Commissioner of Police; and all duties which an officer in charge of a police-station is authorized or required to perform, may be performed in any of the Presidency-towns by an officer of the police-force not below the rank of Inspector.

*Further provisions as to reception orders and medical certificates.*

18. (1) Every medical certificate under this Act shall be made and signed by a medical practitioner or a medical officer, as the case may be, and shall be in the form prescribed.

(2) Every medical certificate shall state the facts upon which the person certifying has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others; and no reception order on petition shall be made upon a certificate founded only upon facts communicated by others.

(3) Every medical certificate made under this Act shall be evidence of the facts therein appearing and of the judgment therein stated to have been formed by the person certifying on such facts, as if the matters therein appearing had been verified on oath.

19. (1) A reception order required to be founded on a medical examination of lunatic shall not be made unless the person who signs the medical certificate, or, where two certificates are required, each person who signs a certificate, has personally examined the alleged lunatic, in the case of an order upon petition, not more than seven clear days before the date of the presentation of the petition, and, in all other cases, not more than seven clear days before the date of the order.

(2) Where two medical certificates are required, a reception order shall not be made unless each person signing a certificate has examined the alleged lunatic separately from the other.

20. A reception order, if the same appears to be in conformity with this Act, shall be sufficient authority for the petitioner or any person authorized by him, or in the case of an order not made upon petition, for



the person authorized so to do by the person making the order, to take the lunatic and convey him to the place mentioned in such order and for his reception and detention therein, or in any asylum to which he may be removed in accordance with the provisions of this Act, and the order may be acted on without further evidence of the signature or of the jurisdiction of the person making the order.

**21.** Any authority making a reception order under this Part shall forthwith send a certified copy of the order to the person in charge of the asylum into which such lunatic is to be admitted.

Copy of reception order to be sent to person in charge of asylum.

**22.** Subject to the provisions of section 85, no Magistrate shall make a reception order for the admission of any lunatic into any asylum established by Government outside the Province in which the Magistrate exercises jurisdiction.

Restriction as to asylums into which reception orders may direct admission.

*Detention of lunatics pending removal to asylum.*

**23.** When any reception order has been made under sections 7, 10, 14 or 15, the Magistrate may, for reasons to be recorded in writing, direct that the lunatic, pending his removal to an asylum, be detained in suitable custody in such place as the Magistrate thinks fit.

Detention of lunatics pending removal to asylum.

*Reception and detention of criminal lunatics.*

**24.** An order under section 466 or section 471 of the Code of Criminal Procedure,\* 1898, or under section 30 of the Prisoners Act,† 1900, directing the reception of a criminal lunatic into any asylum which is prescribed for the reception of criminal lunatics shall be sufficient authority for the reception and detention of any person named therein in such asylum or in any other asylum to which he may be lawfully transferred.

Reception and detention of criminal lunatics.

*Reception after inquisition.*

**25.** A lunatic so found by inquisition may be admitted into an asylum—

Reception after inquisition.

\* Act V. of 1898.

† Act III. of 1900.

- (1) in the case of an inquisition under Chapter IV, on an order made by or under the authority of the High Court;
- (2) in the case of an inquisition under Chapter V, on an order made by the District Court.

**26.** (1) When any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him :

Provided that, if at any time it shall appear to the satisfaction of the Court that the lunatic has not sufficient property, and that no person legally bound to maintain such lunatic has sufficient means for the payment of such cost, the Court shall certify the same instead of making such order for the payment of the costs as aforesaid.

(2) An order under sub-section (1) shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as a decree made by the Court in a suit in respect of the property or person therein mentioned.

*Amendment of order or certificate.*

**27.** If, after the reception of any lunatic into any asylum, on amendment of order or a reception order, it appears that the certificate, order upon which he was received or the medical certificate or certificates upon which such order was made is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

## CHAPTER III.

## CARE AND TREATMENT.

*Visitors.*

28. (1) The local Government shall appoint for every asylum not less than three visitors, one of whom shall be a medical officer.

Appointment of visitors.

(2) The Inspector-General of Prisons (where such office exists) shall be a visitor *ex officio* of all the asylums within the limits of his jurisdiction.

29. Two or more of the visitors, one of whom shall be a medical officer, shall, once at least in every month, together inspect every part of the asylum of which they are visitors, and see and examine as far as circumstances will permit, every lunatic and boarder therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the inmates thereof.

Monthly inspection by visitors.

30. (1) When any person is confined under the provisions of section 465 or section 471 of the Code of Criminal Procedure,\* 1898, the Inspector-General of Prisons, if such person is confined in a jail, or the visitors of the asylum or any two of them, if he is confined in an asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report as to the state of mind of such person to the authority under whose order he is confined.

Inspection of criminal lunatics by Inspector-General or visitors.

(2) The Local Government may empower the officer in charge of the jail in which such person may be confined to discharge all or any of the functions of the Inspector-General under sub-section (1).

*Discharge of duties.*

31. (1) Three of the visitors of any asylum, of whom one shall be a medical officer, may, by order in writing, direct the discharge of any person from the asylum.

Order of discharge from asylum by visitors.

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\* Act V. of 1898.

place where he is for the time being confined, to any asylum, jail or other place of safe custody in British India.

### *Escape and re-capture*

**36.** Every person received into an asylum under any such Order to justify detention order as is required by this act, may be and re-capture after escape. detained therein until he is removed or discharged as authorized by law, and in case of escape may, by virtue of such order, be re-taken by any police-officer or by the person in charge of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said person in charge, and conveyed to and received and detained in such asylum :

Provided that in the case of a lunatic not being a criminal lunatic or a lunatic in respect of whom a reception order has been made under section 12, the power to re-take such escaped lunatic under this section shall be exerciseable only for a period of one month from the date of his escape.

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## PART III.

### JUDICIAL INQUISITION AS TO LUNACY.

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#### CHAPTER IV.

##### PROCEEDINGS IN LUNACY IN PRESIDENCY-TOWNS.

##### *Inquisition.*

**37.** The Courts having jurisdiction under this Chapter shall be the High Courts of Judicature at Fort William, Madras and Bombay.

**38. (1)** The Court may upon application by order direct an inquisition whether a person subject to the jurisdiction of the Court who is alleged to be insane, is of unsound mind and incapable of managing himself and his affairs.

**(2)** Such order may also contain directions for inquiries concerning the nature of the property belonging to the alleged lunatic,

the persons who are his relatives, the time during which he has been of unsound mind, or such other matters as to the Court may seem proper.

**39.** Application for such inquisition may be made by any relative of the alleged lunatic, or by the Advocate-General.  
Application by whom to be made.

**40.** (1) Notice shall be given to the alleged lunatic of the time and place at which it is proposed to hold the inquisition.  
Notice of time and place of inquisition.

(2) If it appears that personal service on the alleged lunatic would be ineffectual, the Court may direct such substituted service of the notice as it thinks fit.

(3) The Court may also direct a copy of such notice to be served upon any relative of the alleged lunatic and upon any other person to whom in the opinion of the Court notice of the application should be given.

**41.** (1) The Court may require the alleged lunatic to attend at such convenient time and place as it may appoint for the purpose of being personally examined by the Court, or by any person from whom the Court may desire to have a report of the mental capacity and condition of such alleged lunatic.  
Powers of Court in respect of attendance and examination of lunatic.

(2) The Court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

**42.** The attendance and examination of the alleged lunatic under the provisions of section 41 shall, if the alleged lunatic be a woman who, according to the manners and customs of the country, ought not to be compelled to appear in public, be regulated by the law and practice for the examination of such persons in other civil cases.  
Rules respecting attendance and examination of females alleged to be lunatic.

**43.** (1) If the alleged lunatic is not within the local limits of the jurisdiction of the Court, and the inquisition cannot conveniently be made in the manner hereinbefore provided, the Court may direct the inquisition to be made before the District Court within whose local jurisdiction the alleged lunatic may be; and such District Court shall accordingly proceed to  
Power to direct District Court to make inquisition in certain cases.

make such inquisition in the same manner as if the alleged lunatic were subject to its jurisdiction, and shall certify its finding upon the matters of inquisition to the Court directing the inquisition.

(2) The record of evidence taken upon the inquisition shall be transmitted, together with any remarks the Court may think fit to make thereon, to the Court by which the inquisition was directed.

44. If the finding of the District Court appears to the Court directing the inquisition to be defective or insufficient in point of form, it may either amend the same or refer it back to the Court which made the inquisition to be amended.

45. The finding of the Court on the inquisition or the finding of the District Court to which the inquisition may have been referred under the provisions of section 43 with such amendments as may be made under the provisions of section 44, as the case may be, shall have the same effect, and be proceeded on in the same manner in regard to the appointment of a guardian of a person and a manager of the estate of the lunatic as the findings referred to in section 12 of the Lunacy (Supreme Courts) Act,\* 1858, immediately before the commencement of this Act.

*Judicial powers over person and estate of lunatic.*

46. (1) The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provision for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

**47.** The Court, on the appointment of a manager of the estate of a lunatic, may direct by the Powers of manager in respect of management of lunatic's estate. order of appointment, or by any subsequent order, that such manager shall have such powers for the management of the estate as to the Court may seem necessary and proper, reference being had to the nature of the property, whether moveable or immoveable, of which the estate may consist :

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise, any immoveable property of the lunatic ; or

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

**48.** The Court may, on application made to it by petition concerning any matter whatsoever connected with the lunatic or his estate, make such order, subject to the provisions of this Chapter, respecting the application, as in the circumstances, it thinks fit.

### *Management and administration.*

**49.** The Court may, if it appears to be just or for the lunatic's benefit, order that any property moveable, or immoveable, of the lunatic, and whether in possession, reversion, remainder, or contingency be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem most expedient for the purpose of raising or securing or repaying with or without interest money to be applied or which has been applied to all or any of the following purposes, namely—

- (1) the payment of the lunatic's debts or engagements ;
- (2) the discharge of any incumbrance on his property ;
- (3) the payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit ;
- (4) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent on him for

maintenance, including the expenses of his removal to Europe, if he shall be so removed, and all expenses incidental thereto ;

- (5) the payment of the costs of any inquiry under this Chapter, and of any costs incurred by order or under the authority of the Court.

**50. (1)** The manager of the lunatic's estate shall, in the name and on behalf of the lunatic execute all such conveyances and instruments of transfer relative to any sale, mortgage or other disposition of his estate as the Court may order.

(2) Such manager shall, in like manner, under the order of the Court, exercise all powers whatsoever vested in a lunatic, whether the same are vested in him for his own benefit or in the character of trustee or guardian.

**51.** Where a person, having contracted to sell or otherwise dispose of his estate or any part thereof, afterwards becomes lunatic, the Court may, if the contract is such as the Court thinks ought to be performed, direct the manager of the estate to execute such conveyances and to do such other acts in fulfilment of the contract as it shall think proper.

**52. (1)** Where a person, being a member of a partnership firm, is found to be a lunatic, the Court may, on the application of the other partners, or of any person who appears to the Court to be entitled to require the same, dissolve the partnership.

(2) Upon such dissolution, or upon a dissolution by decree of Court or otherwise by due course of law, the manager of the estate may, in the name and on behalf of the lunatic, join with the other partners in disposing of the partnership property upon such terms, and shall do all such acts for carrying into effect the dissolution of the partnership, as the Court shall think proper.

**53.** Where a lunatic has been engaged in business, the Court may, if it appears to be for the lunatic's benefit that the business premises should be disposed of, order the manager of the estate



to sell and dispose of the same ; and the moneys arising from such sale shall be applied in such manner as the Court may direct.

**54.** Where a lunatic is entitled to a lease or under-lease and it appears to be for the benefit of his estate that it should be disposed of, the manager of the estate may, by order of the Court, surrender, assign or otherwise dispose of the same to such person for such valuable or nominal consideration, and upon such terms, as the Court thinks fit.

**55.** If a lunatic is possessed of any immoveable property situate beyond the local limits of the jurisdiction of the Court, which by the law in force in the Province wherein such property is situated, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the said Court of Wards may assume the charge of such property and manage the same according to the law for the time being in force for such management :

Provided that—

- (1) in such case, no further proceedings in respect of the lunacy shall be taken under any such law, nor shall it be competent to the Court of Wards or to any Collector to appoint a guardian of the person of the said lunatic or a manager of the estate except of the immoveable property which so subjects the proprietor as aforesaid :
- (2) the surplus of the income of such property, after providing for the payment of the Government revenue and expenses of management, shall be disposed of from time to time in such manner as the High Court may direct :
- (3) nothing contained in this section shall affect the powers given to the High Court by sections 49, 50 and 51 or (except so far as relates to the management of the said immoveable property which so subjects the proprietor as aforesaid) the powers given by any other section.

**56. (1)** If it appears to the Court, having regard to the situation and condition in life of the lunatic and his family and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner it may, instead of appointing a manager of the estate, order that the property if money or if of any other description the produce thereof, when realized, be paid to such person as the Court may think fit, to be applied for the purpose aforesaid.

**(2)** The receipt of the person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the lunatic to such person.

*Vesting orders.*

**57.** Where any stock or Government securities or any share in a company (transferable within British India or the dividends of which are payable there) is or are standing in the name of, or vested in, a lunatic, beneficially entitled thereto, or in a manager of the estate of a lunatic, or in a trustee for him, and the manager dies intestate, or himself becomes lunatic, or is out of the jurisdiction of the Court, or it is uncertain whether the manager is living or dead, or he neglects or refuses to transfer the stock, securities or shares, or to receive and pay over thereof the dividends to a new manager or as the Court directs, within fourteen days after being required by the Court to do so, then the Court may order some fit person to make such transfer, or to transfer the same, and to receive and pay over the dividends in such manner as the Court directs.

**58.** Where any such stock or Government securities or share in a company is or are standing in the name of, or vested in, any person residing out of British India, and the United Kingdom, the Court upon being satisfied that such person has been declared lunatic, and that his personal estate has been vested in a person appointed for the management thereof, according to the law of the place where he is residing, may order some fit person to make such transfer of the stock, securities or shares, or of any part thereof, to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends and proceeds as the Court thinks fit.

*General.*

**59.** If it appears to the Court that the unsoundness of mind

Power to apply property of a lunatic is in its nature temporary, for lunatic's maintenance in and that it is expedient to make temporary provision for his maintenance or case of temporary lunacy. for the maintenance of such members of his family as are dependent on him for their maintenance, the Court may, in like manner as under section 56, direct his property or a sufficient part of it to be applied for the purpose aforesaid.

**60.** (1) When any person has been found under this Chapter

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased. to be of unsound mind and it is subsequently shown to the Court that there is reason to believe that such unsoundness of mind has ceased, the Court may make an order for inquiring whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall be conducted as far as may be in the manner prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic; and if it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the court may seem fit.

**61.** The Court may, from time to time, make rules for the

Power of Court to make purpose of carrying into effect the provisions of this chapter in matters of lunacy.

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## CHAPTER V.

### PROCEEDINGS IN LUNACY OUTSIDE PRESIDENCY-TOWNS.

#### *Inquisition.*

**62.** Whenever any person not subject to the jurisdiction of

Power of District Court to any of the Courts mentioned in section 37 is possessed of property and is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

**63. (1)** Application for such inquisition may be made by any

Application by whom to relative of the alleged lunatic or by any  
be made. public curator appointed under the Suc-  
cession (property protection) Act,\* 1841 (hereinafter referred to as  
the curator), or by the Government Pleader, as defined in the  
Code of Civil Procedure,† 1908 or if the property of the alleged  
lunatic consists in whole or in part of land or any interest in land,  
by the Collector of the District in which it is situate.

(2) If the property or any part thereof is of such a description  
that it would by the law in force in any Province where such  
property is situate subject to the proprietor, if disqualified, to the  
jurisdiction of the Court of Wards, the application may be made  
by the Collector on behalf of the Court of Wards.

**64.** The provisions of sections 40, 41 and 42 shall regulate  
Regulation of proceedings the proceedings of the District Court with  
of District Courts. regard to the matters to which they relate.

**65. (1)** The District Court, if it thinks fit, may appoint two  
Inquisition by District or more persons to Act as assessors to  
Court and finding thereon. the Court in the said inquisition.

(2) Upon the completion of the inquisition, the Court shall  
determine whether the alleged lunatic is of unsound mind and  
incapable of managing himself and his affairs or may come to a  
special finding that such alleged lunatic is of unsound mind so as  
to be incapable of managing his affairs but that he is capable of  
managing himself and is not dangerous to himself or to others.

**66. (1)** If the alleged lunatic resides at a distance of more  
than fifty miles from the place where the  
Inquisition by subordinate District Court is held to which the appli-  
Court on commission issued District Court is held to which the appli-  
by District Court and pro- cation is made, the said Court may issue  
ceedings thereon. a commission to any subordinate Court  
to make the inquisition, and such subordinate Court shall thereupon  
conduct the inquisition in the manner hereinbefore provided in this  
Chapter.

(2) On the completion of the inquisition, the subordinate  
Court shall transmit the record of its proceedings with the opinions  
of the assessors if assessors have been appointed, and its own  
opinion on the case; and the District Court shall thereupon proceed

\* Act XIX. of 1841.

† Act V. of 1908.

to dispose of the application in the manner provided in section 65, sub-section (2):

Provided that the District Court may direct the subordinate Court to make such further or other inquiries as it thinks fit before disposing of the application.

*Judicial powers over person and estate of lunatic.*

**67. (1)** The Court may make orders for the custody of lunatics so found by inquisition and the management of their estates.

(2) When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic.

**68.** If the estate of a lunatic so found or any part thereof consists of property which, by the law for the time being in force, subjects the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the Court of Wards shall be authorised to take charge of the same.

**69. (1)** If the estate of a lunatic so found consists in whole or in part of land or any interest in land but is not of such a nature that it would subject the proprietor, if disqualified, to the jurisdiction of the Court of Wards, the District Court may direct the Collector to take charge of the person and estate of the lunatic:

Provided that no such order shall be made without the consent of the Collector previously obtained.

(2) The Collector shall thereupon appoint a manager of the estate, and may appoint a guardian of the person of the lunatic.

**70.** All proceedings of the Collector in regard to the person or estate of a lunatic under this Chapter shall be subject to the control of the

Local Government or of such authority as it may appoint in this behalf.

Power of District Court to appoint guardian and manager and take security from manager.

**71. (1)** In all other cases the District Court shall appoint a manager of the estate of the lunatic and may appoint a guardian of his person:

Provided that a District Court may, instead of appointing a manager of the estate of a lunatic, exercise any of the powers conferred on the High Court under sections 56 and 59.

(2) Any person who has been appointed by the District Court or Collector to manage the estate of a lunatic shall, if so required, enter into a bond in such form and with such sureties as to the Court or the Collector, as the case may be, may seem fit, engaging duly to account for what he may receive in respect of the property of the lunatic.

**72.** The legal heir of a lunatic shall not be appointed to be the guardian of the person of such lunatic unless the Court or the Collector, as the case may be, for reasons to be recorded in writing considers that such an appointment is for the benefit of the lunatic.

**73.** A guardian of the person of a lunatic or a manager of his estate appointed under this Chapter shall be paid such allowance, if any, as the Court or the Collector, as the case may be, thinks fit for his care and pains in the execution of his duties.

**74. (1)** The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

(2) When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as may be fixed by the District Court or the Collector, as the case may be, for the maintenance of the lunatic and such members of his family as are dependent on him for their maintenance.

**75. (1)** Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic, and may

collect and pay all just claims, debts and liabilities due to or by the estate of the lunatic :

Provided that no manager so appointed shall without the permission of the Court—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property of the lunatic,

(b) lease any such property for a term exceeding five years.

Such permission may be granted subject to any condition or restriction which the Court thinks fit to impose.

(2) Before granting any such permission, the Court may cause notice of the application for such permission to be served on any relative or friend of the lunatic, and may make or cause to be made such inquiries as to the Court may seem necessary in the interests of the lunatic.

**76.** (1) Every person appointed by the District Court or by Managers to furnish inventory and annual accounts. the Collector to be manager of the estate of a lunatic shall, within six months from the date of his appointment, deliver in Court or to the Collector, as the case may be, an inventory of the immoveable property belonging to the lunatic and of all such money, or other moveable property, as he may receive on account of the estate, together with a statement of all debts due by or to the same.

(2) Every such manager shall also furnish to the Court or to the Collector annually, within three months of the close of the year of the era current in the district, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

**77.** If any relative of the lunatic, or the Collector by petition Proceeding if accuracy of inventory or accounts is impugned. to the Court, impugns the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it thinks fit ; or the Court, at its discretion, may refer any such petition to any subordinate Court or to the Collector if the manager was appointed by the Collector.

**78.** All sums received by a manager on account of any estate Payment into public treasury and investment of proceeds of estate. in excess of what may be required for the current expenses of the lunatic or of the estate, shall be paid into the

public treasury on account of the estate and shall be invested from time to time in any of the securities specified in section 20 of the Indian Trust Act,\* 1882, unless the Court or the Collector, as the case may be, for reasons to be recorded in writing directs that such sums be in the interest of the lunatic otherwise invested or applied.

**79.** Any relative of a lunatic may with the leave of the District Court sue for an account from any manager appointed under this Chapter, or from any such person after his removal from office or trust, or from his legal representative in case of his death, in respect of any estate then or formerly under his care or management or of any sums of money or other property received by him on account of such estate.

**80. (1)** The District Court, for any sufficient cause, may remove any manager appointed by it not being the curator, and may appoint such curator or any other fit person in his place, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all money received or disbursed by him.

(2) The Court may also, for any sufficient cause, remove any guardian of the person of the lunatic appointed by it and may appoint any other fit person in his place.

(3) The Collector, for any sufficient cause, may remove any manager of the estate of a lunatic or guardian of the person of a lunatic appointed by him, and may appoint any other fit person in place of such manager or guardian; and the District Court, on the application of the Collector, may compel any manager removed under this section to make over the property and all accounts in his hands to his successor and to account to such successor for all money received or disbursed by him.

**81.** The District Court may impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or refuses to deliver his accounts or any property in his hands within the time fixed by the Court, and may realize such fine as if it were a sum due

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\* Act II. of 1882.



under a decree of the Court, and may also commit the recusant to the civil jail until he delivers such accounts or property.

**82. (1)** When any person has been found under this Chapter

Proceedings in lunacy to cease or to be set aside if Court finds that the unsoundness of mind has ceased.

to be of unsound mind, and it is subsequently shown to the District Court that there is reason to believe that such unsoundness of mind has ceased, such Court may make an order for inquir-

ing whether such person is still of unsound mind and incapable of managing himself and his affairs.

(2) The inquiry shall, as far as may be, be conducted in the same manner as is prescribed in this Chapter for an inquisition into the unsoundness of mind of an alleged lunatic, and if it is found that the unsoundness of mind has ceased the Court shall order all proceedings in the lunacy to cease or to be set aside on such terms and conditions as to the Court may seem fit.

**83.** An appeal shall lie to the High Court from any order made by a District Court, under this Chapter.

Appeals.

## PART IV.

## MISCELLANEOUS.

### CHAPTER VI.

#### ESTABLISHMENT OF ASYLUMS.

Local Government may establish or license the establishment of asylums.

**84.** The Local Government may establish or license the establishment of asylums at such places as it thinks fit.

**85.** The Governor-General in Council may by any general Provision for admission of lunatics in asylums outside or special order direct that Magistrates or Courts exercising jurisdiction in any province may send lunatics or any class of lunatics to any asylum situate in any other province.

## CHAPTER VII.

## EXPENSES OF LUNATICS.

86. (1) When any lunatic is admitted to a licensed asylum under a reception order or an order under section 25 and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum.

Payment of cost of maintenance in licensed asylums in certain cases by Government.

(2) The Paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic received and detained therein under an order made under section 12.

87. Any money in the possession of a lunatic found wandering. Application of property in the possession of a lunatic found wandering. ing at large may be applied by the Magistrate towards the payment of the cost of maintenance of the lunatic or of any other expenses incurred on his behalf, and any moveable property found on the person of the lunatic may be sold by the Magistrate and the proceeds thereof similarly applied.

88. If a lunatic detained in an asylum on a reception order made under section 14, section 15 or section 17 has an estate applicable to his maintenance, or if any person legally bound to maintain such lunatic has the means to maintain him, the authority which made the reception order or any local authority liable for the cost of maintenance of such lunatic under any law for the time being in force may apply to the High Court or District Court within the local limits of the original jurisdiction of which the estate of the lunatic is situate or the person legally bound to maintain him resides, for an order for the payment of the cost of maintenance of the lunatic.

89. (1) The Court shall inquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may make

Application to Civil Court for order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

Order of Court and enforcement thereof.

an order for the recovery of the cost of maintenance of such lunatic together with the costs of the application out of such estate or from such person.

(2) Such order shall be enforced in the same manner, and shall be of the same force and effect and subject to the same appeal as a decree made by the said Court in a suit in respect of the property or person therein mentioned.

90. The liability of any relative or person to maintain any

Saving of liability of relatives to maintain lunatic. lunatic shall not be taken away or affected by any provision contained in this Act.

## CHAPTER VIII.

### RULES.

91. (1) Subject to the control of the Governor-General in Council, the Local Government may make rules for all or any of the following purposes, namely:—

- (a) to prescribe forms for any proceeding under this Act other than a proceeding before a High Court which is or may hereafter be established under the Indian High Courts Acts, 1861 to 1911.\*
- (b) to prescribe places of detention and regulate the care and treatment of persons detained under section 8 or section 16;
- (c) to regulate the confinement, care, treatment and discharge of criminal lunatics;
- (d) to regulate the management of asylums and the care and custody of the inmates thereof and their transfer from one asylum to another;
- (e) to regulate the transfer of criminal lunatics to asylums;
- (f) to prescribe the procedure to be followed by District Courts and Magistrates before a lunatic is sent to any asylum established by Government;

\* 24 & 25 Vict., c. 104, to 1 & 2 Geo. 5, c. 18.

(g) to prescribe the asylums established by Government within the province to which lunatics from any area or any class of lunatics shall be sent ;

(h) to prescribe conditions subject to which asylums may be licensed ;

(i) save as otherwise provided in this Act, generally to carry into effect the provisions of the Act.

(2) In making any rule under this section the Local Governments may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

92. All rules made under section 91 shall be published in the local official Gazette and shall thereupon have effect as if enacted in this Act.

Publication of rules.

## CHAPTER IX.

### SUPPLEMENTAL PROVISIONS.

Penalty for improper reception or detention of lunatic.

93. Any person who—

(a) otherwise than in accordance with the provisions of this Act receives or detains a lunatic or alleged lunatic in an asylum, or

(b) for gain detains two or more lunatics in any place not being an asylum,

shall be punishable with imprisonment which may extend to two years or with fine or with both.

94. The provisions of Chapter XLII. of the Code of Criminal Procedure,\* 1898, shall, so far as may be, apply to bonds taken under this Act.

Provision as to bonds.

95. (1) When any sum is payable in respect of pay, pension, gratuity or other similar allowance to any person by Government and the person to whom the sum is payable is certified by a Magistrate to be

Pension of lunatic payable by Government.

\* Act V. of 1898.

a lunatic, the Government officer under whose authority such sum would be payable if the payee were not a lunatic may pay so much of the said sum as he thinks fit to the person having charge of the lunatic, and may pay the surplus, if any, or such part thereof as he thinks fit for the maintenance of such members of the lunatic's family as are dependent on him for maintenance.

(2) The Secretary of State for India in Council shall be discharged of all liability in respect of any amounts paid in accordance with this section.

**96.** Subject to any rules, the forms set forth in the First Schedule, with such variation as the circumstances of each case may require, shall be used for the respective purposes therein mentioned, and if used shall be sufficient.

**97.** No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

**98.** Any officer in charge of an asylum may give effect to any order or warrant for the reception and detention of any lunatic made or issued by any Court or tribunal beyond the limits of British India in the exercise of jurisdiction conferred by His Majesty or the Governor-General in Council.

**99.** The Governor-General in Council may make rules regulating the procedure for the reception and detention in asylums in British India of lunatics whose reception and detention are provided for by section 98.

**100.** (1) In the case of orders made before the commencement of this Act under section 7 of the Indian Lunatic Asylums Act,\* 1858, for the reception of persons into an asylum, the persons who signed the order shall have all the powers and be subject to the obligations by this Act conferred or imposed upon the petitioner for a reception order, and the provisions of this Act relating to persons upon whose petition a reception order was made shall apply in the case of a person who has signed an order, under section 7 of the Indian Lunatic Asylums Act,\* 1858, before the commencement of this

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\* Act XXXVI. of 1858.

Act as if the order had been made after the commencement of this Act upon a petition presented by him.

(2) All orders for the detention of lunatics made and all undertakings given under any enactment hereby repealed shall have the same force and effect as if they had been made or given under this Act and by or to the authority empowered thereby in such behalf.

**101.** The enactments mentioned in the Second Schedule are repealed to the extent specified in the fourth column thereof.

## SCHEDULE I.

### FORMS.

(See section 96.)

#### FORM 1.

(Application for Reception Order. See sections 5 and 6.)

In the matter of A. B.\*, residing at \_\_\_\_\_, by occupation \_\_\_\_\_, son of \_\_\_\_\_; a person alleged to be a lunatic.

To \_\_\_\_\_ Presidency Magistrate, for \_\_\_\_\_ [or District Magistrate of \_\_\_\_\_, or Sub-divisional Magistrate of \_\_\_\_\_ or Magistrate specially empowered under Act \_\_\_\_\_ of 1912 for \_\_\_\_\_].

The petition of C. D.\*, residing at \_\_\_\_\_, by occupation \_\_\_\_\_, son of \_\_\_\_\_ in the town of \_\_\_\_\_ [or sub-division of \_\_\_\_\_ in the district of \_\_\_\_\_].

1. I am \_\_\_\_\_ † years of age.

2. I desire to obtain an order for the reception of A. B. as a lunatic in the \_\_\_\_\_ asylum of \_\_\_\_\_ situate at ‡.

3. I last saw the said A. B. at \_\_\_\_\_ on the § day of \_\_\_\_\_

\* Full name, caste and titles.

† Enter the number of completed years. The petitioner must be at least eighteen (or twenty-one whichever is the age of majority under the law to which the petitioner is subject).

‡ Insert full description of the name and locality of the asylum or the name, address and description of the person in charge of the asylum.

§ A day within 14 days before the date of the presentation of the petition is requisite.

4. I am the \_\_\_\_\_ " of the said A. B.  
 [ *or if the petitioner is not a relative of the patient state as follows.* ]

I am not a relative of the said A. B. The reasons why this petition is not presented by a relative are as follows : [ *State them.* ]

The circumstances under which this petition is presented by me are as follows : [ *State them.* ]

5. The persons signing the medical certificates which accompany the petition are †.

6. A statement of particulars relating to the said A. B. accompanies this petition.

7. [ *If that is the fact.* ] An application for an inquiry into the mental capacity of the said A. B. was made to the \_\_\_\_\_ on the \_\_\_\_\_ and a certified copy of the order made on the said petition is annexed hereto. [ *Or if that is the fact.* ]

No application for an inquiry into the mental capacity of the said A. B. has been made previous to this application.

The petitioner therefore prays that a reception order may be made in accordance with the foregoing statement.

(Sd.) C. D.

The statements contained or referred to in paragraphs are true to my knowledge ; the other statements are true to my information and belief.

(Sd.) C. D.

*Dated*

*Statement of particulars.*

[ *If any of the particulars in this statement is not known, the fact to be \_\_\_\_\_ so stated.* ]

The following is a statement of particulars relating to the said A. B.

Name of patient at length.

Sex and age.

Married, single or widowed.

Previous occupation.

Caste and religious belief, as far as known.

Residence at or immediately previous to the date hereof.

\* Here state the relationship with the patient.

† Here state whether either of the persons signing the medical certificates is a relative, partner or assistant of the lunatic or of the petitioner and, if a relative of either, the exact relationship.

Names of any near relatives to the patient who are alive.

Whether this is first attack of lunacy.

Age (if known) on first attack.

When and where previously under care and treatment as a lunatic.

Duration of existing attack.

Supposed cause.

Whether the patient is subject to epilepsy.

Whether suicidal.

Whether the patient is known to be suffering from phthisis or any form of tubercular disease.

Whether dangerous to others and in what way.

Whether any near relative (stating the relationship) has been afflicted with insanity.

Whether the patient is addicted to alcohol, or use of opium, ganja, charas, bhang, cocaine or other intoxicant.

[ The statements contained or referred to in paras. are true to my knowledge. The other statements are true to my information and belief. ]

[ Signature by person making the statement. ]

## FORM 2.

### *Reception order on Petition.*

(See sections 7, 10.)

I, the undersigned E. F., being a Presidency Magistrate of  
 [or the District Magistrate of or the Sub-divisional  
 Magistrate of—] or a Magistrate of the first class specially empowered  
 by Government to perform the functions of a Magistrate under Act  
 of 1912 ] upon the petition of C. D. of\* in the matter of  
 A. B.,\* a lunatic, accompanied by the medical certificates of G. H., a  
 medical officer, and of J. K., a medical practitioner [ or medical officer ],  
 under the said Act, hereto annexed, hereby authorise you to receive  
 the said A. B. into your asylum. And I declare that I have [ or have  
 not ] personally seen the said A. B. before making this order.

(Sd.) E. F.

(Designation as above.)

To†

\* Address and description.

† To be addressed to the officer or person in charge of the asylum.



## FORM 3.

*Medical Certificate.*

(See sections 18, 19)

In the matter of A. B. of\* in the town of [ or the  
sub-division of in the district of ] an alleged  
lunatic.

I, the undersigned C. D., do hereby certify as follows :

1. I am a gazetted medical officer [or a medical practitioner declared by  
a holder of† [or declared by Local Government to be a medical practi-  
tioner under Act of 1912.]

and I am in the actual practice of the medical profession.

2. On the day of 19 at‡ in the <sup>town</sup><sub>village</sub> of [ or  
the subdivision of in the district of ]  
[separately from any other practitioner] §, I personally examined  
the said A. B. and came to the conclusion that the said A. B. is a  
lunatic and a proper person to be taken charge of and detained under  
care and treatment.

3. I formed this conclusion on the following grounds, *vis* :—

(a) Facts indicating insanity observed by myself, *vis* :—

(b) Other facts (if any) indicating insanity communicated to me  
by others, *vis* :—

*Here state the information and from whom.*

(Sd.) C. D.

(Designation as above.)

## FORM 4.

*Reception Order in case of Lunatic Soldier.*

(See section 12)

Whereas it appears to me that A. B., a European, subject to the  
Army Act, who has been declared a lunatic in accordance with the

\* Insert residence of patient.

† Insert qualification to practise medicine and surgery registrable in the  
United Kingdom.

‡ Insert place of examination.

§ Omit this where only one certificate is required.

provisions of the military regulations, should be removed to an asylum, I do hereby authorise you to receive the said A. B. into your asylum.

(Sd.) E. F.

(Administrative Medical Officer.)

To\*

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### FORM 5.

*Reception Order in case of wandering or dangerous lunatics or lunatics not under proper control or cruelly treated (sent to an asylum established by Government.)*

(See sections 14, 15, 17.)

I, C. D., Presidency Magistrate of [ or Commissioner of Police for ] [ or the District Magistrate of or the sub-divisional Magistrate of or a Magistrate specially empowered by Government under Act of 1912 ] having caused A. B. to be examined by E. F., a Medical Officer under the Indian Lunacy Act, 1912, and being satisfied that A. B. [ describing him ] is a lunatic who was wandering at large [ or is a person dangerous by reason of lunacy ] [ or is a lunatic not under proper care and control or is cruelly treated or neglected by the person having the care or charge of him ] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. into your asylum.

(Sd.) C. D.

*Designation as above.*

Dated the

To the Officer in Charge of the asylum at .

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### FORM 6.

*Same when sent to a licensed asylum.*

I, C. D., [ as above down to "care and treatment" ] and being satisfied with the engagement entered into in writing by G. H. of [ here insert address and description ] who has desired that the said A. B. may be sent to the asylum at [ here insert description of

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\* To be addressed to the person in charge of an asylum duly authorised by Government to receive lunatic Europeans subject to the Army Act.

*asylum and name of the person in charge*] to pay the cost of maintenance of the said A. B., in the said asylum, hereby authorize you to receive the said A. B. into your asylum.

(Sd.) C. D.

(Designation as above.)

Dated the

To the person in charge of the asylum at

FORM 7.

*Bond on the making over of a lunatic to the care of relative or friend.*

(See sections 14, 15, 17.)

Whereas A. B., son of , inhabitant of , has been brought up before C. D., a Presidency Magistrate for the town of [or Commissioner of Police for ] or the <sup>District</sup> Sub-divisional Magistrate of , or a Magistrate of the first class specially empowered under Act of 1912] and is a lunatic who is believed to be dangerous [or deemed to be a lunatic who is not under proper care and control or is cruelly treated or neglected by the person having the charge of him] and whereas I, E. F., son of , inhabitant of , have applied to the Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care :

I, E. F., abovenamed hereby bind myself that on the said A. B. being made over to my care, I will have the said A. B. properly taken care of and prevented from doing injury to himself or to others : and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Sd.) E. F.

(Where a bond with sureties is to be executed add)—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being made over to his care, have the said A. B. properly taken care of and prevented from doing injury to himself or to others ; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees .

Dated this day of 19 .

(Signature.)

## FORM 8.

*Bond on the discharge of a lunatic from an asylum on the undertaking of relative or friend to take due care.*

*(See section 33.)*

Whereas A. B., son of \_\_\_\_\_, inhabitant of \_\_\_\_\_, is a lunatic who is now detained in the asylum at \_\_\_\_\_ under an order made by C. D., a Presidency Magistrate for the town of \_\_\_\_\_  
 [or Commissioner of Police for \_\_\_\_\_]  
 [or the <sup>District</sup> Sub-divisional Magistrate of \_\_\_\_\_, or a Magistrate of the first class specially empowered under Act \_\_\_\_\_ of 1912] under section 14 [or section 15] of Act \_\_\_\_\_ of 1912 and whereas I, E. F., son of \_\_\_\_\_, inhabitant of \_\_\_\_\_, have applied to the said Magistrate [or Commissioner of Police] that the said A. B. may be delivered to my care and custody :

I hereby bind myself that on the said A. B. being made over to my care and custody, I will have him properly taken care of and prevented from doing injury to himself or to others; and in case of my making default therein, I hereby bind myself to forfeit to His Majesty the King-Emperor of India, the sum of Rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(Sd.) \_\_\_\_\_ E. F.

*(Where a bond with sureties is to be executed add)*—We do hereby declare ourselves sureties for the abovenamed E. F. that he will, on the aforesaid A. B. being delivered to his care and custody, have the said A. B. properly taken care of and prevented from doing injury to himself or to others; and in case of the said E. F. making default therein, we bind ourselves, jointly and severally, to forfeit to His Majesty the King-Emperor of India, the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*(Signature.)*

## SCHEDULE II.

## ENACTMENTS REPEALED.

*(See section 101.)*

1	2	3	4
Year.	No.	Short title.	Extent of Repeal.
1858	XXXIV.	Lunacy (Supreme Courts) Act, 1858.	So much as has not been repealed.
"	XXXV.	Lunacy (District Courts) Act, 1858.	Ditto.
"	XXXVI.	Indian Lunatic Asylums Act, 1858.	Ditto.
1877	XI.	Military Lunatics Act, 1877.	Ditto.
1886	XVIII.	Indian Lunatic Asylums Act (1858) Amendment Act, 1886.	Ditto.
1889	XX.	Indian Lunatic Asylums Act (1858) Amendment Act, 1889.	Ditto.
1894	XIII.	Amending (Army) Act, 1894.	So much as relates to the Military Lunatics Act, 1877.
1898	V.	Code of Criminal Procedure, 1898.	Section 471, sub-sections (2) and (3) and section 472.
1909	"	Amending (Army) Act, 1909.	So much as relates to the Military Lunatics Act, 1877.



# ACT XXXII. OF 1839.

## The Interest Act, 1839.\*

PASSED ON THE 30TH DECEMBER 1839.

*An Act concerning the allowance of Interest in certain cases.†*

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd

\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

† This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

(1) Sindh.—See *Gazette of India*, 1880, Pt. I., p. 672.

(2) West Jalpaiguri, the Western Dvars, namely, that portion of the Jalpaiguri Division known as the Western Dvars, that is, the country lying between the Tista and Sunkos Rivers in the Jalpaiguri District, the Western Hills of of Darjiling (that is, the Hills west of the Tista River in the District of Darjiling), the Darjiling Tarai and the Damson Sub-Division of the District of Darjiling.—See *Gazette of India*, 1881, Pt. I., p. 74.

(3) The District of Hazaribagh.—See *Gazette of India*, 1881, Pt. I., p. 507.

(4) The District of Lohardaga.—See *Gazette of India*, 1881, Pt. I., p. 508.

(5) The District of Manbhum.—See *Gazette of India*, 1881, Pt. I., p. 509.

(6) The Paragana of Dhalbhum in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I., p. 510.

(7) The Scheduled portion of the Mirzapur District.—See *Gazette of India*, 1879, Pt. I., p. 383.

(8) Jaunsar Bawar.—See *Gazette of India*, 1879, Pt. I. p. 382.

(9) The Scheduled Districts of the Central Provinces.—See *Gazette of India*, 1879, Pt. I., p. 771.

and 4th William IV., chapter 42, section 28, concerning the allowance of interest in certain cases.\*

It is, therefore, hereby enacted that, upon all debts or sums Power of Court to allow certain payable at a certain time or other-  
interest. wise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment, provided that interest shall be payable in all cases in which it is now payable by law.

(10) The Districts of Hazara, Peshawar, Kohat, Bannu, Dara Ismail Khan and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 48.

(11) The District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

(12) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills).—*Gazette of India*, 1878, Pt. I., p. 533.

(13) The District of Sylhet.—See *Gazette of India*, 1879, Pt. I., p. 631.

(14) The Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goalpara District.—See *Gazette of India*, 1897, Pt. I., p. 299.

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

(1) Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606.

(2) The North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

\* Short title, "The Civil Procedure Act, 1833."—See the Short Titles Act, 1896, (59 & 60 Vict., c. 14).



# ACT XVIII. OF 1850:

## The Judicial Officers' Protection Act, 1850.\*

PASSED ON THE 4TH APRIL 1850.

### *An Act for the Protection of Judicial Officers.*

FOR the greater protection of Magistrates and others acting judicially, it is enacted as follows:—

Preamble.

\* Act XVIII. of 1850 has been declared to be in force in the whole of British India except as regards the Scheduled Districts by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886); in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3; in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3; and in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1874), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886).

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

- (1) The Taluqs of Bhadrachalam, Rakapilli, and the Rampa Country (see *Gazette of India*, 1879, Pt. I., p. 630):
- (2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504):
- (3) Sindh (see *Gazette of India*, 1878, Pt. I., p. 482):
- (4) West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District (see *Gazette of India*, 1881, Pt. I., p. 74):
- (5) Kumaon and Garhwal (see *Gazette of India*, 1876, Pt. I., p. 605):
- (6) The Scheduled Portion of the Mirzapur District (see *Gazette of India*, 1879, Pt. I., p. 383):
- (7) Jaunsar Bawar (see *Gazette of India*, 1879, Pt. I., p. 382):
- (8) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see *Gazette of India*, 1886, Pt. I., p. 48):

- (a) the expression "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth :
- (b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land :
- (c) the expression "Collector" means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the Local Government to perform the functions of a Collector under this Act :
- (d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the Local Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act :
- (e) the expression "company" means a company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor-General in Council, or by Royal Charter or Letters Patent :
- (f) the expression "public purpose" includes the provision of village-sites in districts in which the Local Government shall have declared, by notification in the official Gazette, that it is customary for the Government to make such provision : and
- (g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say):—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted in free from disability :

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age ; and the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted :

Provided that—

- (i) no person shall be deemed “entitled to act” whose interest in the subject-matter shall be shown, to the satisfaction of the Collector or Court, to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;
- (ii) in every such case the person interested may appear by a next friend, or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;
- (iii) the provisions of Chapter XXXI. of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act ; and
- (iv) no person “entitled to act” shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land, and receive and give a good discharge for the purchase-money on a voluntary sale.

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## PART II.

### ACQUISITION.

#### *Preliminary Investigation.*

4. (1) Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the

Publication of preliminary notification, and powers of officers thereupon.

official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the subsoil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken, and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries, and line, by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed, and the levels taken, and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence, or jungle :

Provided that no person shall enter into any building, or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof), without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid ; and, Payment for damage. in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

### *Declaration of Intended Acquisition.*

6. (1) Subject to the provisions of Part VII. of this Act, when-  
 Declaration that land is re- ever it appears to the Local Government  
 quired for a public purpose. that any particular land is needed for a  
 public purpose, or for a company, a declaration shall be made to  
 that effect under the signature of a Secretary to such Government,  
 or of some officer duly authorized to certify its orders :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be need-

After declaration Collector ed for a public purpose or for a com-  
to take order for acquisition. pany, the Local Government, or some  
officer authorized by the Local Government in this behalf, shall  
direct the Collector to take order for the acquisition of the land:

8. The Collector shall thereupon cause the land (unless it has  
Land to be marked out, been already marked out under section  
measured, and planned. 4) to be marked out. He shall also  
cause it to be measured, and (if no plan has been made thereof) a  
plan to be made of the same.

9. (1) The Collector shall then cause public notice to be  
Notice to persons interest- given, at convenient places on or near  
ed. the land to be taken, stating that the  
Government intends to take possession of the land, and that claims  
to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so need-  
ed, and shall require all persons interested in the land to appear,  
personally or by agent, before the Collector at a time and place  
therein mentioned (such time not being earlier than fifteen days  
after the date of publication of the notice), and to state the nature  
of their respective interests in the land and the amount and parti-  
culars of their claims to compensation for such interests, and their  
objections (if any) to the measurements made under section 8. The  
Collector may in any case require such statement to be made in  
writing, and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on  
the occupier (if any) of such land, and on all such persons known

or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last-known residence, address, or place of business, and registered under Part III. of the Indian Post Office Act, 1866.

**10.** (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant, or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9, shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

*Enquiry into Measurements, Value, and Claims, and Award by the Collector.*

**11.** On the day so fixed, or on any other day to which the Enquiry and award by Collector. enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any), which any person interested has stated pursuant to a notice given under section 9, to the measurements made under section 8, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of—

(i) the true area of the land;

(ii) the compensation which, in his opinion, should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the

land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

**12.** (1) Such award shall be filed in the Collector's office, and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally, or by their representatives when the award is made.

**13.** The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

**14.** For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.

**15.** In determining the amount of compensation the Collector shall be guided by the provisions contained in sections 23 and 24.

### *Taking Possession.*

**16.** When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

**17.** (1) In cases of urgency, whenever the Local Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1, take possession of any waste or arable land needed for public purposes, or for a company.

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic, or for the purpose of making thereon a riverside or ghât station, or for providing convenient connection with, or access to, any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section 1, and with the previous sanction of the Local Government, enter upon, and take possession of, such land, which shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees (if any) on such land, and for any other damage sustained by them caused by such sudden dispossession, and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

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### PART III.

#### REFERENCE TO COURT AND PROCEDURE THEREON.

**18.** (1) Any person interested who has not accepted the award may, by written application to the

Reference to Court.

Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:



Provided that every such application shall be made,—

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award :
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection 2, or within six months from the date of the Collector's award, whichever period shall first expire.

**19.** (1) In making the reference, the Collector shall state, Collector's statement to the for the information of the Court, in Court. writing under his hand,—

- (a) the situation and extent of the land, with particulars of any trees, buildings, or standing crops thereon;
- (b) the names of the persons whom he has reason to think interested in such land;
- (c) the amount awarded for damages, and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and,
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively.

**20.** The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely :—

- (a) the applicant;
- (b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and,
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

**21.** The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

**22.** Every such proceeding shall take place in open Court, and all persons entitled to practice in any Court. Civil Court in the province shall be entitled to appear, plead, and act (as the case may be) in such proceeding.

**23. (1)** In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

*first*, the market-value of the land at the date of the publication of the declaration relating thereto under section 6;

*secondly*, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

*thirdly*, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

*fourthly*, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

*fifthly*, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

*sixthly*, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall, in every case, award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation. 24. But the Court shall not take into consideration,—

*First*, the degree of urgency which has led to the acquisition;

*secondly*, any disinclination of the person interested to part with the land acquired;

*thirdly*, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

*fourthly*, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

*fifthly*, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

*sixthly*, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

*seventhly*, any outlay or improvements on, or disposal of, the land acquired, commenced, made, or effected without the sanction of the Collector after the date of the publication of the declaration under section 6.

25. (1) When the applicant has made a claim to compensation,

Rules as to amount of compensation. pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed, or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim, or has omitted, without sufficient reason (to be allowed by the Judge), to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted, for a sufficient reason (to be allowed by the Judge), to make such claim, the amount awarded

to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

**26.** Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

**27.** (1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportions, they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant, or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made, or that he should pay a part of the Collector's costs.

**28.** If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

## PART IV.

### APPORTIONMENT OF COMPENSATION.

**29.** Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and, as between such persons, the award shall be conclusive evidence of the correctness of the apportionment.

**30.** When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part

thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

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## PART V.

### PAYMENT.

**31. (1)** On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation, as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Local Government, instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable, having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with, or limit the power of, the Collector to enter into any arrangement with any person interested in the land, and competent to contract in respect thereof.

**32. (1)** If any money shall be deposited in Court under sub-section 2 of the last preceding section, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would, for the time being, have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

(i) in the purchase of such other lands as aforesaid; or.

(ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

**33.** When any money shall have been deposited in Court

Investment of money deposited in other cases. under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any

such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein, the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited, or as near thereto as may be.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 6 per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

## PART VI.

### TEMPORARY OCCUPATION OF LAND.

35. (1) Subject to the provisions of Part VII. of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land, and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose, or for a company.

**37.** In case the Collector and persons interested differ as to Difference as to condition the condition of the land at the expiration of land. tion of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

## PART VII.

### ACQUISITION OF LAND FOR COMPANIES.

**38.** (1) Subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, the Local Government may authorize any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if, for the words, "for such purpose," the words, "for the purposes of the company," were substituted; and section 5 shall be construed, as if, after the words, "the officer," the words, "of the company," were inserted.

**39.** The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company, unless with the previous consent of the Local Government, nor unless the company shall have executed the agreement hereinafter mentioned.



40. (1) Such consent shall not be given, unless the Local Government be satisfied, by an enquiry held as hereinafter provided,—  
Previous enquiry.

(a) that such acquisition is needed for the construction of some work, and

(b) that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer, and at such time and place, as the Local Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided by the Code of Civil Procedure in the case of a Civil Court.

41. Such officer shall report to the Local Government the Agreement with Secretary result of the enquiry, and, if the Local of State in Council. Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor-General of India in Council may, from time to time, prescribe in this behalf, require the company to enter into an agreement with the Secretary of State for India in Council, providing, to the satisfaction of the Local Government, for the following matters, namely:—

(1) the payment to Government of the cost of the acquisition ;

(2) the transfer, on such payment, of the land to the company ;

(3) the terms on which the land shall be held by the company ;

(4) the time within which, and the conditions on which, the work shall be executed and maintained ; and

(5) the terms on which the public shall be entitled to use the work.

42. Every such agreement shall, as soon as may be, after its execution, be published in the *Gazette of India*, and also in the local official *Gazette*, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

**43.** The provisions of sections 39 to 42, both inclusive, shall not apply, and the corresponding sections of the Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any railway or other company, for the purposes of which, under any agreement between such company and the Secretary of State for India in Council, the Government is or was bound to provide land.

**44.** In the case of the acquisition of land for the purposes of a railway company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

## PART VIII.

### MISCELLANEOUS.

**45.** (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector, or in the Court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last-known residence, address, or place of business, and registered under Part III. of the Indian Post Office Act, 1866, and service of it may be proved by the production of the addressee's receipt.

**46.** Whoever wilfully obstructs any person in doing any of the acts authorized by section 4 or section 8, or wilfully fills up, destroys, damages, or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

**47.** If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

**48.** (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III. of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

**49.** (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building, if the owner desire that the whole of such house, manufactory, or building shall be so acquired :

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory, or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or not form part of a house, manufactory, or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and shall not take possession of such land until after the question has been determined.

In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section 1 *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the Local Government is of opinion that the claim is unreasonable or excessive, it may at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall, without delay, furnish a copy of the order of the Local Government to the person interested, and shall thereafter proceed to make his award under section 11.

**50.** (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of a local authority or company, of any fund controlled or managed by a local authority, or of any company, the charges of, and incidental to, such acquisition shall be defrayed from or by such fund or company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under section 18.

**51.** No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

52. No suit or other proceeding shall be commenced or pro-

Notice in case of suits for anything done in pursuance of Act. prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

53. Save in so far as they may be inconsistent with anything

Code of Civil Procedure to apply to proceedings before Court. contained in this Act, the provisions of the Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

54. Subject to the provisions of the Code of Civil Procedure

Appeals in proceedings before Court. applicable to appeals from original decrees, an appeal shall lie to the High Court from the award, or from any part of the award, of the Court in any proceedings under this Act.

55. (1) The Local Government shall have power to make rules

Powers to make rules. consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may, from time to time, alter and add to the rules so made.

(2) The power to make, alter, and add to rules under subsection 1 shall be subject to the condition of the rules being made, altered, or added to after previous publication.

(3) All such rules, alterations, and additions, shall, when sanctioned by the Governor-General in Council, be published in the official Gazette, and shall thereupon have the force of law.

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# ACT XVIII. OF 1885.\*

## The Land Acquisition (Mines), Act.

RECEIVED THE G.-G.'S ASSENT ON THE 16TH OCTOBER 1885.

*An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act,† 1870.*

WHEREAS it is expedient to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act,\* 1870; It is hereby enacted as follows:—

Short title, commencement,  
and local extent.

1. (1) This Act may be called  
“The Land Acquisition (Mines) Act  
1885;” and

(2) It shall come into force at once.

(3) It extends, in the first instance, to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal, but any other Local Government may, from time to time, by notification in the official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

2. Except as expressly provided by this Act, nothing in this  
Saying for mineral rights of the Government. Act shall affect the right of the Government to any mines or minerals.

3. (1) When the Local Government makes a declaration under  
Declaration that mines are not needed. section 6‡ of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate, or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

\* Declared in force in—

(1) The Santhal Parganas (see Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886):

(2) Angul and the Khondmals (see Reg. I. of 1894, s. 3).

† See now Act I. of 1894.

‡ Corresponding with s. 6 of Act I. of 1894.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6\* of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11† of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14‡ of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15§ of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under section 17|| of that Act publish such a statement in such manner as the Governor-General in Council may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award, or reference, or published as aforesaid the mines of coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in the Government when the land so vests under the said Act.

4. If the person for the time being immediately entitled to

Notice to be given before work or get any mines or minerals lying  
working mines lying under under any land so acquired is desirous  
land. of working or getting the same, he shall  
give the Local Government notice in writing of his intention so to  
do sixty days before the commencement of working.

5. (1) At any time or times after the receipt of a notice

Power to prevent or restrict under the last-foregoing section, and  
working. whether before or after the expiration  
of the said period of sixty days, the Local Government may cause  
the mines or minerals to be inspected by a person appointed by it  
for the purpose; and,

(2) if it appears to the Local Government that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the Local Government may publish, in such manner as the Gov-

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\* Corresponding with s. 6 of Act I. of 1894.

† Corresponding with s. 11 of Act I. of 1894.

‡ Corresponding with s. 12 of Act I. of 1894.

§ Corresponding with s. 18 of Act I. of 1894.

|| Corresponding with s. 17 of Act I. of 1894.



ernor-General in Council may, from time to time, direct, a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the Local Government may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the Local Government.

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals, and the amounts of compensation payable to them respectively, shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act,\* 1870. for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

7. (1) If, before the expiration of the said sixty days, the Local Government does not publish a declaration as provided in section 5, the owner, lessee, or occupier of the mines, may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee, or occupier of the mines, shall at once, at his

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\* See now Act I. of 1894.

construct the works, and recover the expense thereof from the owner, lessee, or occupier.

**14.** When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested by operation of law in, a local authority or company, then sections 4 to 13, both inclusive, shall be read as if for the words "the Local Government," wherever they occur in those sections, the words, "the local authority or company, as the case may be, which has acquired the land," were substituted.

**15. (1)** This Act shall apply to any land for the acquisition whereof proceedings under the Land Acquisition Act,\* 1870, are pending at the time when this Act comes into force, unless before that time the Collector has made, in respect of the land, and award under section 14† or a reference to the Court under section 15‡ of that Act, or has taken possession of the land under section 17§ of the same.

(2) When the Collector has, before the said time, made an award or reference in respect of any such land, or taken possession thereof as aforesaid, and all the persons interested in the land, or entitled under the Land Acquisition Act,\* 1870 to act for persons so interested, who have attended or may attend in the course of the proceedings under sections 11 to 15,|| both inclusive, of the Land Acquisition Act,\* 1870 consent in writing to the application of this Act to the land, the Collector may, by an order in writing, direct that it shall apply, and thereupon it shall be deemed to have applied, from the commencement of the proceedings; and the Collector shall be deemed, as the case may be, to have inserted in his award or reference, or to have published in the prescribed manner, when he took possession, the statement mentioned in section 3 of this Act.

\* See now Act I. of 1894.

† Corresponding with s. 12 of Act I. of 1894.

‡ Corresponding with s. 18 of Act I. of 1894.

§ Corresponding with s. 17 of Act I. of 1894.

|| S. 11 corresponds with s. 11 of Act I. of 1894,

S. 12           "           "   S. 13   "   "   "   "

S. 13           "           "   S. 15   "   "   "   "

S. 14           "           "   S. 12   "   "   "   "

S. 15           "           "   S. 18   "   "   "   "

Definition of local authority and company.

16. In this Act—

(a) "local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund ; and

(b) "company" means a company registered under any of the enactments relating to companies from time to time in force in British India, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent.

17. This Act shall, for the purposes of all enactments for the time being in force, be read with,

This Act to be read with  
Land Acquisition Act,\* 1870

and taken as part of, the Land Acquisition Act,\* 1870.

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\* See now Act I. of 1894.



# THE LEGAL PRACTITIONERS ACT, 1879

(Act XVIII. of 1879).

[As amended by Act I. of 1908.]

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# THE LEGAL PRACTITIONERS ACT, 1879

## (Act XVIII. of 1879).\*

RECEIVED G.-G.'S ASSENT ON 29TH OCTOBER 1879.

### *An Act to consolidate and amend the law relating to Legal Practitioners.*

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces, and Assam, and to empower each of the Local Governments of the rest of British India to extend, to the territories administered by it, such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

1. This Act may be called the Legal Practitioners Act, 1879, and shall come into force on the first day of January 1880.

Short title.

Commencement.

This section and section 2 extend to the whole of British India.

Local extent.

The rest of this Act extends in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may,

\* For the Statement of Objects and Reasons, see *Gazette of India*, 1878, Pt. V., p. 381; for the Reports of the Select Committee, see *ibid.*, 1879, Pt. V., pp. 51 and 841; for Proceedings in Council, see *ibid.*, 1878, Supplement, pp. 1658 and 1693; *ibid.*, 1879, Supplement, pp. 79, 1066, and 1375.

Act XVIII. of 1879 has been declared in force in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3; and, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), in the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I., p. 504. (The District of Lohardaga included at this time the District of Palamau, which was separated in 1894.)

from time to time, by notification in the official Gazette, extend\* all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January 1880, the enactments mentioned in the First Schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of enactments.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment hereby repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

Saving of rules, &c.

All references made to any enactment hereby repealed, in any References to repealed Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

enactments.

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause—

“Judge” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

“Judge : ”

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX. of 1850† or Act No. XI. of 1865‡ :

“Subordinate Court : ”

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\* Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882.—See *Fort St. George Gazette*, 1881, Pt. I., pp. 491 and 707, Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency (see *Bombay Government Gazette*, 1885, Pt. I., p. 290).

Ch. I, s 40. Sch. II., and so much of Chs. III., V., VI., and VII. as relates to pleaders have been extended to Coorg.—See *Mysore Gazette*, 1879 Pt. I., p. 355.

† See now the Presidency Small Cause Courts Act (XV. of 1882).

‡ See now the Provincial Small Cause Courts Act (IX. of 1887).



"Revenue-office" includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents.

"Revenue-office : "

"Legal practitioner" means an advocate, vakil, or attorney of any High Court, a pleader, mukhtar, or revenue-agent :

"Legal practitioner : "

"Tout" means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.

"Tout. "

## CHAPTER II.

### OF ADVOCATES, VAKILS, AND ATTORNEYS.

4. Every person now or hereafter entered as an advocate or vakil on the roll of any High Court Advocates and vakils, under the Letters Patent constituting such Court, or "under section 41 of this Act,"<sup>†</sup> or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act,<sup>‡</sup> shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered, who ordinarily practises in the Court on the roll of which he is entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office :

\* The definition of "tout" has been added by the Legal Practitioners Act (XI. of 1896), s. 1.

† The words and figures quoted in s. 4 have been substituted for the words, "as an advocate on the roll of the Chief Court of the Punjab," by the Legal Practitioners Act (IX. of 1884), s. 2.

‡ In para. 1 of s. 4 and the Proviso following, the Italicized words have been added by the Legal Practitioners (Amendment) Act (I. of 1908), s. 2.

Provided that no such *vakil or pleader* shall be entitled to practise under this section before a judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency-town.

5. Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court; and every person so entered, who ordinarily practises in the Court on the roll of which he is so entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

### CHAPTER III.

#### OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, &c., of pleaders and mukhtars.

6. The High Court may, from time to time, make rules\* consistent with this Act as to the following matters (namely)—

- (a) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;

\* For rules made under this section by—

- (1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30;
- (2) High Court, Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 150 and 151;
- (3) High Court, North-Western Provinces, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 75 and 76;
- (4) Judicial Commissioner, Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 76.

- (b) the qualifications, admission, and certificates of proper persons to be mukhtars of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;
- (c) the fees to be paid for the examination and admission of such persons ; and
- (d) the suspension and dismissal of such pleaders and mukhtars.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law :  
 Publication of rules.

Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

**7.** On the admission, under section 5, of any person as a pleader or mukhtar, the High Court shall cause a certificate signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules\* consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

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\* For rules regarding renewal of certificates made by—

- (1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30 :
- (2) High Court, Madras, *see* the Rules quoted in foot-note on previous page, which were also made under s. 7.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

“Provided that, on the admission as a pleader of any person who has been previously entered as a vakil or attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorizing him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.”\*

**8.** Every pleader holding a certificate issued under section 7

Pleaders, on enrolment, may apply to be enrolled in any Court may practise in Courts and or revenue-office mentioned therein, and revenue-offices. situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and subject to such rules† consistent with this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead, and act in such Court or office, and in any Court or revenue-office subordinate thereto.

**9.** Every mukhtar holding a certificate issued under section 7

Mukhtars, on enrolment, may apply to be enrolled in any Civil may practise in Courts. or Criminal Court mentioned therein, and situate within the same limits; and, subject to such rules as the High Court may, from time to time, make in this behalf, the presiding Judge shall enrol him accordingly, and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure‡) appear, plead, and act in any such Criminal Court, and any Court subordinate thereto.

**10.** Except as provided by this Act, or any other enactment

No person to practise as for the time being in force, no person pleader or mukhtar unless shall practise as a pleader or mukhtar qualified. in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and

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\* This *proviso* quoted has been added by the Legal Practitioners (Amendment) Act (I. of 1908), s. 3.

† For rules made by the High Court at Madras, see those quoted in the foot-note on p. 6, *supra* which were also made under s. 8.

‡ See now the Code of Criminal Procedure (Act V. of 1898).

has been enrolled in such Court, or in some Court to which it is subordinate :

Provided that persons who have been admitted as revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled, in manner provided by section 9, in any Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869\* (*to amend the procedure in suits between landlord and tenant*), or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

**11.** Notwithstanding anything contained in the Code of Civil Procedure,† the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtars practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

**12.** The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character, which unfits him to be a pleader or mukhtar, as the case may be.

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

**13.‡** The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

(a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,† or some servant, relative, or friend authorized by the party to give such instructions, or

\* See now the Bengal Tenancy Act (VIII. of 1885).

† See now the new Code of Civil Procedure (Act V. of 1908).

‡ This section (13) has been substituted for the original by the Legal Practitioners Act (XI. of 1896), s. 2.

- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives, or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment, in any legal business, of himself or any other pleader or mukhtar, or
- (d) who, directly or indirectly, procures or attempts to procure, the employment of himself as such pleader or mukhtar through or by the intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause.

**14.** If any such pleader or mukhtar practising in any subordinate Court, or in any revenue-office, is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtar.

Any District Judge or, with his sanction, any Judge subordinate to him, "any Judge of a Court of Small Causes of a Presidency-town,"\* any District Magistrate or, with his sanction, any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or, with the Collector's sanction, any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall,—

- (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge ;
- (b) when made by a Magistrate subordinate to the Magistrate of the District,† be made through the Magistrate of the District‡ and the Sessions Judge ;
- (c) when made by the Magistrate of the District,† be made through the Sessions Judge ;
- (d) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

**15.** The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

**16.** Notwithstanding anything contained in any Letters Patent, or in the Code of Civil Procedure,‡ section 37, clause (a), any High Court established by Royal Charter may, from

\* In s. 14, para. 5, the words quoted have been inserted by the Legal Practitioners Act (IX. of 1884), s. 4.

† To be read as District Magistrate.—See the Present Code of Criminal Procedure (Act V. of 1898), s. 3 (2).

‡ See now the new Code of Civil Procedure (Act V. of 1908), Or III., 1, 2, corresponding with s. 37 of the Code of 1882 (Act XIV. of 1882).

time to time, make rules consistent with this Act as to the following matters (namely)—

- (a) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court,
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the security which they may be required to give for their honesty and good conduct;
- (d) the suspension and dismissal of such mukhtars; and
- (e) declaring what shall be deemed to be their functions, powers, and duties;

any may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

## CHAPTER IV.

### OF REVENUE-AGENTS.\*

Power to make rules as to qualifications, &c., of revenue-agents.

**17.** The Chief Controlling Revenue Authority may, from time to time, make rules† consistent with this Act as to the following matters (namely)—

- (a) the qualifications, admission, and certificates of proper persons to be revenue-agents;
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the suspension and dismissal of such revenue-agent; and

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\* Revenue-agents in Oudh may appear, plead, and act in suits under the Oudh Rent Act (XIX. of 1868).—See Act XVIII. of 1876, s. 25, and the third clause of s. 2 of this Act.

† For rules made under this section as to revenue-agents in—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp. 153-158.

(2) North-Western Provinces, see North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 76.



(d) declaring what shall be deemed to be their functions, powers, and duties.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.  
 Publication of rules.

**18.** On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate to revenue-agents. Revenue Authority shall cause a certificate, signed by such officer as such authority, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue Authority.

**19.** Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue-agent in such office, and in any revenue-office subordinate thereto.

**20.** Except as provided by this Act or any other enactment for the time being in force, no person, No person to act as agent in revenue-offices unless other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue-agent in any revenue-office, unless he

holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate :

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

**21.** The Chief Controlling Revenue Authority may suspend

Dismissal of revenue-agent convicted of criminal offence. or dismiss any revenue-agent holding a certificate issued under this Act, who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

**22.\*** The Chief Controlling Revenue Authority may also,

Suspension and dismissal of revenue-agents guilty of unprofessional conduct. after such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives, or consents to the retention out of any fee paid or payable to him for his services, of any gratification for procuring or having procured, the employment, in any legal business, of himself or any other revenue-agent, or
- (c) who, directly or indirectly, procures, or attempts to procure, the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (e) for any other reasonable cause.

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\* S. 22 has been substituted for the original by the Legal Practitioners Act (XI. of 1896), s. 3.

**23.** If any revenue-agent holding a certificate issued under

Procedure when revenue-agent is so charged in subordinate office.

this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day, or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue Authority; and such authority shall proceed to acquit, suspend, or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

**24.** The Chief Controlling Revenue Authority, in any case

Power to Chief Controlling Revenue Authority to call for record.

in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

## CHAPTER V.

## OF CERTIFICATES.

25. Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, "and of such description as the Local Government may from time to time prescribe:"\*

Fee for certificates.

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

"Provided also that no stamped paper shall be required in the case of a certificate, whether original or renewed, authorizing, under section 7, a Vakil or Attorney on the roll of a High Court established by Royal Charter to practise as a Pleader."†

26. When any Pleader, Mukhtar, or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

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\* In s. 25, the words quoted have been inserted by the Legal Practitioners Act (IX. of 1884), s. 5. For instance of rule prescribing the stamp paper to be used for certificates, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 78.

† The second *proviso* in s. 25 is added by the Legal Practitioners (Amendment) Act (I. of 1908), s. 4.

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## CHAPTER VI.

## OF THE REMUNERATION OF PLEADERS, MUKHTARS, AND REVENUE-AGENTS.

**27.** The High Court shall, from time to time, fix and regulate the fees\* payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar, or attorney upon all proceedings (a) on the appellate

High Court and Chief Controlling Revenue Authority to fix fees on civil and revenue proceedings.

side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees‡ payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar, or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

**28.** No agreement entered into by any pleader, mukhtar, or revenue-agent with any person retaining or employing him, respecting the amount

Agreements with clients.

\* For rules as to pleaders' fees made by—

- (1) Judicial Commissioner, Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 79;
- (2) High Court, Madras, *see* the rules quoted in the foot-note on p. 6, *supra*, which were also framed under this section;
- (3) High Court, North-Western Provinces, *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78;
- (4) Judicial Commissioner, Oudh (pleaders in Civil Courts), *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78.

† To s. 27, the words quoted have been added by the Legal Practitioners Act (IX. of 1884), s. 6.

‡ For rules as to fees in revenue-proceedings in—

- (1) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 80;
- (2) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 76 and 77.

and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtar, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court; in which some portion of the business in respect of which it has been executed has been or is to be done.

**29.** Where a suit is brought to enforce any such agreement, if Power to modify or cancel the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder, or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done, to be ascertained in the same manner as if no such agreement had been made.

**30.** Such an agreement shall exclude any further claim of the Agreements to exclude pleader, mukhtar, or revenue-agent beyond the terms of the agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly expected by the agreement.

**31.** A provision in any such agreement that the pleader, Reservation of responsibility mukhtar, or revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtar, or revenue-agent, shall be wholly void.

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## CHAPTER VII.

### PENALTIES—

**32.** Any person who practises in any Court or revenue-office On persons illegally practising as pleaders, mukhtars, or revenue-agents. in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment,

to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done, or any disbursement made, by him as pleader, mukhtar, or revenue-agent whilst he has been contravening the provisions of either of such sections.

**33.** Any pleader, mukhtar, or revenue-agent failing to deliver

On suspended or dismissed up his certificate as required by section  
pleader, &c., failing to deliver 26 shall be liable, by order of the Court,  
certificate. authority, or officer, to which or to whom,  
or according to whose orders, the delivery should be made, to a  
fine not exceeding two hundred rupees, and, in default of payment,  
to imprisonment in the civil jail for a term which may extend to  
three months.

**34.** Any pleader, mukhtar, or revenue-agent, who, under the

On suspended or dismissed provisions of this Act, has been suspended  
practitioner practising during or dismissed, and who, during such sus-  
suspension or after dismissal. pension or after such dismissal, practises  
as a pleader, mukhtar, or revenue-agent in any Court or revenue-  
office, shall be liable, by order of such Court or the officer at the  
head of such office, to a fine not exceeding five hundred rupees,  
and, in default of payment, to imprisonment in the civil jail for a  
term which may extend to six months.

**35.** Every order under section 32, 33, or 34 shall be subject

Revision of fines. to revision by the High Court where the  
order has been passed by a subordinate  
Court, and by the Chief Controlling Revenue Authority where the  
order has been passed by an officer subordinate to such authority.

**36.\*** (1) Every High Court, District Judge, Sessions Judge,

Power to frame and publish District Magistrate, and Presidency  
lists of touts. Magistrate, every Revenue-officer, not  
being below the rank of a Collector of a District, and the Chief  
Judge of every Presidency Small Cause Court (each as regards their  
or his own Court and the Courts, if any, subordinate thereto), may  
frame and publish lists of persons proved to their or his satisfaction,

\* S. 36 has been substituted for the original section (relating to penalty or receiving or giving commission) by the Legal Practitioners Act (XI. of 1896), s. 4.

by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d).

## CHAPTER VIII.

### MISCELLANEOUS.

**37.** To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17, respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

**38.** Except as provided by sections 4, 5, 7,\* 16, 25,\* 27, 32, and 36, nothing in this Act applies to practitioners from certain advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court, or to advocates enrolled "under section 41 of this Act."†

**39.** When any person who holds a certificate as a mukhtar under section 7, and a certificate as a revenue-agent under section 18, is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

\* The figures "7" and "25" are inserted by the Legal Practitioners (Amendment) Act (I. of 1908), s. 5.

† In s. 38, the words quoted have been substituted for the words, "by the Chief Court of the Punjab," by the Legal Practitioners Act (IX. of 1884), s. 7.



**40.** Notwithstanding anything hereinbefore contained, no Pleaders, &c., not to be pleader, mukhtar, or revenue-agent suspended or dismissed without being heard. shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

**41.\*** (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thins fit.

(2) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any advocate so enrolled, or suspend him from practice :

(4) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, "and, except in the case of the Chief Court of the Punjab and the Chief Court of Lower Burma,"† unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

**42.‡** "So much of Chapter VI. of Bombay Regulation II. of 1827 as has not been repealed,"§  
 Repeal of Acts I. of 1846 and XX. of 1853. Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

\* S. 41 has been substituted by the Legal Practitioners Act (IX. of 1884), s. 8, for the original s. 41 (relating to advocates of the Punjab Chief Court).

† in s. 41, sub s. (4), the words quoted have been inserted by the Lower Burma Courts Act (VI. of 1900), Sch. I., Pt. I.

‡ S. 42 has been added by the Legal Practitioners Act (IX. of 1884), s. 9.

§ The words quoted in s. 42 have been inserted by Act I. of 1903, Sch. II.

## FIRST SCHEDULE:

## ENACTMENTS REPEALED.

*(See section 2.)*

Number and Date of Enactments.	Title.	Extent of Repeal.
Act XX, of 1865...	To amend the law relating to Pleaders and Mukhtars.	The whole.
Act XXIX. of 1865.	To amend the Pleaders, Mukhtars, and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX. of 1866 ...	To extend to the Sadar Court of the North-Western Provinces certain provisions of the Pleaders, Mukhtars and Revenue-agents Act, 1865, and of Act No. XXIX. of 1865.	The whole.
Act IV. of 1876 ...	To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The Whole.
Act XVII. of 1877.	The Punjab Courts Act, 1877 ...	Sections 42, 43, 44, and 45.

## SECOND SCHEDULE :

## VALUE OF STAMPS FOR CERTIFICATES.

*(See section 25.)*

## I.

For a certificate authorizing the holder to practise as a pleader—

(a) in the High Court and any subordinate Court—Rupees fifty :

(b) in any Court of Small Causes in a Presidency-town—Rupees twenty-five :

(c) in all other subordinate Courts—Rupees twenty-five :

(d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees fifteen.

(e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five.

## II.

For a certificate authorizing the holder to practise as a mukhtar—

(f) in the High Court and any subordinate Court—Rupees twenty-five :

(g) in any Court of Small Causes in a Presidency-town—Rupees fifteen :

(h) in all other subordinate Courts—Rupees fifteen :

(i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees ten :

(j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned.—Rupees five.

## III.

For a certificate authorizing the holder to practise as a revenue agent—

(k) in the office of the Chief Controlling Revenue Authority and in any revenue-office subordinate to such authority—Rupees fifteen.

(l) in the office of a Commissioner, and in any revenue-office subordinate to a Commissioner—Rupees ten.

(m) in the office of a Collector, and in any revenue-office subordinate to a Collector—Rupees five.

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# ACT NO. IX. OF 1908.

## The Indian Limitation Act, 1908.

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# ACT NO. IX. OF 1908:

## The Indian Limitation Act, 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

[Received His Excellency's Assent on the 7th August 1908.]

*An Act to consolidate and amend the Law for the Limitation of Suits, and for other purposes.*

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals, and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

### PART I.

#### PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Limitation Act, 1908:

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “applicant” includes any person from or through whom an applicant derives his right to apply:

(2) “bill of exchange” includes a hundi and a cheque.

(3) “bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

(4) “defendant” includes any person from or through whom a defendant derives his liability to be sued:

(5) "easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another:

(6) "foreign country" means any country other than British India:

(7) "good faith:" nothing shall be deemed to be done in good faith which is not done with due care and attention:

(8) "plaintiff" includes any person from or through whom a plaintiff derives his right to sue:

(9) "promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight:

(10) "suit" does not include an appeal or an application; and

(11) "trustee" does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

## PART II.

### LIMITATION OF SUITS, APPEALS, AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the First Schedule shall be dismissed, although limitation has not been set up as a defence.

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper when his application for leave to sue as a pauper is made; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4. Where the period of limitation prescribed for any suit, appeal, or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, preferred, or made on the day that the Court re-opens.



5. Any appeal or application for a review of judgment or Extension of period in for leave to appeal, or any other appli-  
 certain cases. cation to which this section may be made  
 applicable by any enactment or rule for the time being in force,  
 may be admitted after the period of limitation prescribed therefor,  
 when the appellant or applicant satisfies the Court that he had suffi-  
 cient cause for not preferring the appeal or making the application  
 within such period.

*Explanation.*—The fact, that the appellant or applicant was  
 misled by any order, practice, or judgment of the High Court in  
 ascertaining or computing the prescribed period of limitation, may  
 be sufficient cause within the meaning of this section.

6. (1) Where a person entitled to institute a suit or make  
 an application for the execution of a  
 Legal disability. decree is, at the time from which the  
 period of limitation is to be reckoned, a minor, or insane, or an  
 idiot, he may institute the suit or make the application within the  
 same period after the disability has ceased as would otherwise have  
 been allowed from the time prescribed therefor in the third column  
 of the First Schedule.

(2) Where such person is, at the time from which the period  
 of limitation is to be reckoned, affected by two such disabilities, or  
 where, before his disability has ceased, he is affected by another  
 disability, he may institute the suit or make the application within  
 the same period, after both disabilities have ceased, as would other-  
 wise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such  
 person, his legal representative may institute the suit or make the  
 application within the same period after the death as would other-  
 wise have been allowed from the time so prescribed.

(4) Where such representative is, at the date of the death,  
 affected by any such disability, the rules contained in sub-sections  
 (1) and (2) shall apply.

#### *Illustrations.*

(a.) The right to sue for the hire of a boat accrues to A during his  
 minority. He attains majority four years after such accrues: He may  
 institute his suit at any time within three years from the date of his attain-  
 ing majority.

(b.) A right to sue accrues to Z during his minority. After the  
 accrues, but while Z is still a minor, he becomes insane: Time runs against  
 Z from the date when his insanity and minority cease.

(c.) A right to sue accrues to *X* during his minority. *X* dies before attaining majority, and is succeeded by *Y*, his minor son: Time runs against *Y* from the date of his attaining majority.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others, or until the disability has ceased.

#### *Illustrations.*

(a.) *A* incurs a debt to a firm of which *B*, *C*, and *D* are partners. *B* is insane, and *C* is a minor. *D* can give a discharge of the debt without the concurrence of *B* and *C*: Time runs against *B*, *C*, and *D*.

(b.) *A* incurs a debt to a firm of which *E*, *F*, and *G* are partners. *E* and *F* are insane, and *G* is a minor: Time will not run against any of them until either *E* or *F* becomes sane, or *G* attains majority.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

#### *Illustrations.*

(a.) *A*, to whom a right to sue for a legacy has accrued during his minority, attains majority, eleven years after such accrual. *A* has, under the ordinary law, only one year remaining within which to sue: But, under section 6 and this section, an extension of two years will be allowed him making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

(b.) A right to sue for an hereditary office accrues to *A*, who at the time is insane. Six years after the accrual, *A* recovers his reason: *A* has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.

(c.) A right to sue as landlord to recover possession from a tenant accrues to *A*, who is an idiot. *A* dies three years after the accrual, his idiosyncrasy continuing up to the date of his death: *A*'s representative in interest has, under the ordinary law, nine years from the date of *A*'s death within which to bring a suit. Section 6, read with this section, does not extend

that time, except where the representative is himself under disability when the representation devolves on him.

Continuous running of time. 9. Where once time has begun to run, no subsequent disability or inability to sue stops it:

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country unless the rule has extinguished the contract, and the parties were domiciled in such country during the period prescribed by such rule.

### PART III.

#### COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal, or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence, or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India, and from the territories beyond British India, under the administration of the Government, shall be excluded.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance, or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

*Explanation I.*—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation II.*—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

*Explanation III.*—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

**15. (1)** In computing the period of limitation prescribed for

Exclusion of time during any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit, of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

**16.** In computing the period of limitation prescribed for

Exclusion of time during a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

**17. (1)** Where a person who would, if he were living, have a

Effect of death before right right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-section (1) and (2) applies to suits to enforce rights of pre-emption, or to suits for the possession of immoveable property, or of an hereditary office.

**18.** Where any person having a right to institute a suit or

Effect of fraud. make an application has, by means of fraud, been kept from the knowledge of such right, or of the title on which it is founded,

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith, and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

**19. (1)** Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the Indian Evidence Act, 1872,\* oral evidence of its contents shall not be received.

*Explanation I.*—For the purposes of this section, an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform, or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation II.*—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

*Explanation III.*—For the purposes of this section, an application for the execution of a decree or order is an application in respect of a right.

**20. (1)** Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such or of part-payment of principal as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

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\* Act I. of 1872.

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor, or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

*Explanation.*—Debt includes money payable under a decree or order of Court.

**21.** (1) The expression “agent duly authorized in this behalf,”

Agent of person under disability. in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee, or manager, or an agent duly authorized by such guardian, committee, or manager to sign the acknowledgment, or make the payment.

(2) Nothing in the said sections renders one of several joint

Acknowledgment or payment by one of several joint contractors, etc. contractors, partners, executors, or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made, by, or by the agent of, any other or others of them.

**22.** (1) Where, after the institution of a suit, a new plaintiff

Effect of substituting or adding new plaintiff or defendant. or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit, or where a plaintiff is made a defendant or a defendant is made a plaintiff.

**23.** In the case of a continuing breach of contract, and in

Continuing breaches and wrongs. the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

**24.** In the case of a suit for compensation for an act which does not give rise to a cause of action  
 Suit for compensation for act not actionable without special damage. unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

*Illustration.*

*A* owns the surface of a field. *B* owns the subsoil. *B* digs coal there-out without causing any immediate apparent injury to the surface, but at last the surface subsides: The period of limitation in the case of a suit by *A* against *B* runs from the time of the subsidence.

**25.** All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.  
 Computation of time mentioned in instruments.

*Illustrations.*

(a.) A Hindu makes a promissory note bearing a Native date only, and payable four months after date: The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

(b.) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year: The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

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## PART IV.

### ACQUISITION OF OWNERSHIP BY POSSESSION.

**26.** (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement, and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, water-course, use of water, or other easement shall be absolute and indefeasible.



Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if, for the words "twenty years," the words "sixty years" were substituted.

*Explanation.*—Nothing is an interruption within the meaning of this section unless, where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof, and of the person making or authorizing the same to be made.

#### *Illustrations.*

(a.) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January 1890 to 1st January 1910: The plaintiff is entitled to judgment.

(b.) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right: The suit shall be dismissed.

### 27. Where any land or water upon, over, or from which any

Exclusion in favour of easement has been enjoyed or derived  
reversioner of servient tenement. has been held under or by virtue of any

interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

#### *Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that, during ten of these years, C, a Hindu widow, had a life interest in the land; that, on C's death, B became entitled to the land, and that within two years after C's death, he contested A's claim to the right: The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

**28.** At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

## PART V.

### SAVINGS AND REPEALS.

Savings.

**29.** (1) Nothing in this Act shall—

(a) affect the Indian Contract Act, 1872,\* section 25 :

(b) affect or alter any period of limitation specially prescribed for any suit, appeal, or application by any special or local law now or hereafter in force in British India.

(2) Nothing in this Act shall apply to suits under the Indian Divorce Act.†

(3) Sections 26 and 27 and the definition of “easement” in section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882,‡ may for the time being extend.

**30.** Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877.§ may be instituted within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877,§ whichever period expires first.

**31.** (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877.§ in the territories mentioned in the Second Schedule, a suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years, and

\* Act IX. of 1872.

† Act IV. of 1869.

‡ Act V. of 1882.

§ Act XV. of 1877.

pending, at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable.

(2) Where, in the aforesaid territories, the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1907, and before the passing of this Act, either in a Court of first instance or of appeal, on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed, or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and, on such restoration, the provisions of sub-section (1) shall apply.

**32.** The enactments mentioned in the Third Schedule are repealed to the extent specified in the fourth column thereof.

Repeals.

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## THE FIRST SCHEDULE.

(See section 3.)

## FIRST DIVISION : SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
1.—To contest an award of the Board of Revenue under the Waste Lands (claims) Act, 1863 *	<i>Part I.— Thirty days.</i>	When notice of the award is delivered to the plaintiff.
	Thirty days.	
2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	<i>Part II.— Ninety days.</i>	When the act or omission takes place.
	Ninety days.	
3.—Under the Specific Relief Act, 1877,† section 9, to recover possession of immoveable property.	<i>Part III.— Six months.</i>	When the dispossession occurs.
	Six months.	
4.—Under the Employers and Workmen (Disputes) Act, 1860,‡ section 1.	Ditto ...	When the wages, hire, or price of work claimed accrue or accrues due.
5.—Under the summary procedure referred to in section 128 (2) (f) of the Code of Civil Procedure, 1908 §	Ditto ...	When the debt or liquidated demand becomes payable, or when the property becomes recoverable.

\* Act XXIII. of 1863.

† Act I. of 1877.

‡ Act IX. of 1860.

§ Act V. of 1908.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year.</i>	
6.—Upon a Statute, Act, Regulation, or Bye-law, for a penalty or forfeiture.	One year ...	When the penalty or forfeiture is incurred.
7.—For the wages of a household servant, artisan, or labourer not provided for by this Schedule, article 4.	Ditto ...	When the wages accrue due.
8.—For the price of food or drink sold by the keeper of a hotel, tavern, or lodging-house.	Ditto ...	When the food or drink is delivered.
9.—For the price of lodging ...	Ditto ...	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law or general usage, or on special contract.	Ditto ...	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order—	Ditto ...	The date of the order

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>(1) Order under the Code of Civil Procedure, 1908,* on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree;</p> <p>(2) Order under section 28 of the Presidency Small Cause Courts Act, 1882.†</p>	<p><i>Part IV.—</i> <i>One year—</i> <i>contd.</i></p>	
<p>11A.—By a person against whom an order has been made under the Code of Civil Procedure, 1908,* upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.</p>	<p>One year ...</p>	<p>The date of the order.</p>

\* Act V. of 1908.

† Act XV. of 1882.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>12.—To set aside any of the following sales:—</p> <p>(a) sale in execution of a decree of a Civil Court;</p> <p>(b) sale in pursuance of decree or order of a Collector or other officer of revenue;</p> <p>(c) sale for arrears of Government revenue, or for any demand recoverable as such arrears;</p> <p>(d) sale of a patni taluq sold for current arrears of rent.</p> <p><i>Explanation.</i>—In this article "patni" includes any intermediate tenure saleable for current arrears of rent.</p>	<p><i>Part IV.—</i> <i>One year—</i> <i>contd.</i></p> <p>One year...</p>	<p>When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.</p>
<p>13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.</p>	<p>Ditto ...</p>	<p>The date of the final decision or order in the case by a Court competent to determine it finally.</p>
<p>14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.</p>	<p>Ditto ...</p>	<p>The date of the act or order.</p>

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
	<i>Part IV.— One year— contd.</i>	
15.—Against Government to set aside any attachment, lease, or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	One year ...	When the attachment, lease, or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue, or on account of demands recoverable as such arrears.	Ditto ...	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes.	Ditto ...	The date of determining the amount of the compensation
18.—Like suit for compensation when the acquisition is not completed.	Ditto ...	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto ...	When the imprisonment ends.
20.—By executors, administrators, or representatives under the Legal Representatives' Suits Act, 1855.*	Ditto ...	The date of the death of the person wronged.
21.—By executors, administrators, or representatives under the Indian Fatal Accidents Act, 1855†.	Ditto ...	The date of the death of the person killed.

\* Act XII. of 1855.

† Act XIII. of 1855.



THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.— One year— contd.</i>		
22.—For compensation for any other injury to the person.	One year ...	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ...	When the plaintiff is acquitted or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ...	When the libel is published.
25.—For compensation for slander ...	Ditto ...	When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ...	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ...	The date of the breach.
28.—For compensation for an illegal, irregular, or excessive distress.	Ditto ...	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto ...	The date of the seizure.

THE FIRST SCHEDULE.—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.— One year— concl.</i>	
30.—Against a carrier for compensation for losing or injuring goods.	One year ...	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	Ditto ...	When the goods ought to be delivered.
	<i>Part V.—Two years.</i>	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes,	Two years...	When the perversion first becomes known to the person injured thereby.
33.—Under the Legal Representatives' Suits Act, 1855,* against an executor.	Ditto ...	When the wrong complained of is done.
34.—Under the same Act* against an administrator.	Ditto ...	Ditto.
35.—Under the same Act* against any other representative.	Ditto ...	Ditto.
36.—For compensation for any malfeasance, misfeasance, or non-feasance independent of contract, and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance, or non-feasance takes place.

\* Act XIII. of 1855.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years.</i>	
37.—For compensation for obstructing a way or a watercourse.	Three years.	The date of the obstruction.
38.—For compensation for diverting a water-course,	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.
41.—To restrain waste ...	Ditto ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the Indian Succession Act, 1865* section 320 or section 321, or under the Probate and Administration Act, 1881,† section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution.

\* Act X. of 1865.

† Act V. of 1881.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	Three years.	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code :—  The Bengal Land-revenue Settlement Regulation, 1822.*  The Bengal Land-revenue Settlement Regulation, 1825.†  The Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833 ‡	Ditto ...	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	Ditto.
47.—By any person bound by an order respecting the possession of immoveable property made under the Code of Criminal Procedure, 1898,§ or the Mamlatdars' Courts Act, 1906,   or by any one claiming under such person, to recover the property comprised in such order.	Ditto ...	The date of the final order in the case.

\* Ben. Reg. VII. of 1822. ‡ Ben. Reg. IX. of 1833.

† Ben. Reg. IX. of 1825. § Act V. of 1898. || Bom. Act II. of 1906.

THE FIRST SCHEDULE.—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period beings to run.
	<i>Part VI.— Three years— contd.</i>	
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Three years.	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto ...	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats, or house-hold furniture.	Ditto ...	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto ...	When the goods ought to be delivered.
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon,	Ditto ...	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto ...	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto ...	When the period of the proposed bill elapses.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years contd.</i>	
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years.	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto ...	When the work is done.
57.—For money payable for money lent.	Ditto ...	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto ...	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto ...	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Ditto ...	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto ...	When the money is paid.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	<i>Part VI.— Three years— —contd.</i>  Three years.	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto ...	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto ...	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto ...	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Ditto ...	The day so specified.
67.—On a single bond, where no such day is specified.	Ditto ...	The date of executing the bond.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
68.—On a bond subject to a condition.	<i>Part VI.— Three years— —contd.</i> Three years.	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto ...	When the bill of note falls due.
70.—On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Ditto ...	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto ...	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto ...	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto ...	The date of the bill or note.
74.—On a promissory note or bond payable by instalments.	Ditto ...	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.



THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.	<i>Part VI.— Three years— contd.</i>  Three years.	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto ...	The date of the delivery to the payee.
77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto ...	When the notice is given.
78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto ...	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto ...	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for.	Ditto ...	When the bill, note, or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto ...	When the surety pays the creditor.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
82.—By a surety against a co-surety.	Three years.	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto ...	When the plaintiff is actually damaged.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto ...	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open, and current account, where there have been reciprocal demands between the parties.	Ditto ...	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto ...	When proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto ...	When the insurers elect to avoid the policy.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
88.—Against a factor for an account.	Three years.	When the account is, during the continuance of the agency, demanded and refused, or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto ...	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto ...	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto ...	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto ...	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto ...	The date of the attempt.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
94.—For property which the plaintiff has conveyed while insane.	Three years.	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud or for other relief on the ground of fraud.	Ditto ...	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto ...	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto ...	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto ...	The date of the trustee's death, or if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers.	Ditto ...	The date of the payment in excess of the plaintiff's own share.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p><i>Part VI — Three years— contd.</i></p>		
100.—By a co-trustee to enforce against the state of a deceased trustee a claim for contribution.	Three years.	When the right to contribution accrues.
101.—For a seaman's wages ...	Ditto ...	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this Schedule.	Ditto ...	When the wages accrue due.
103.—By a Muhammadan for exigible dower ( <i>mu'ajjal</i> ).	Ditto ...	When the dower is demanded and refused, or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower ( <i>muwajjal</i> ).	Ditto ...	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto ...	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto ...	The date of the dissolution.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— contd.</i>	
107.—By the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate.	Three years.	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto ...	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto ...	When the trees are cut down.
110.—For arrears of rent	Ditto ...	When the arrears become due.
111.—By a vendor of immoveable property for personal payment of unpaid purchase-money.	Ditto ...	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto ...	When the call is payable.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.— Three years— concl'd.</i>	
113.—For specific performance of a contract.	Three years.	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto ...	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered, and not herein specially provided for.	Ditto ...	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
	<i>Part VII.— Six years.</i>	
116.—For compensation for the breach of a contract in writing registered.	Six years ...	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<p>127.—By a person excluded from joint-family property, to enforce a right to share therein.</p> <p>128.—By a Hindu for arrears of maintenance.</p> <p>129.—By a Hindu for a declaration of his right to maintenance.</p> <p>130.—For the resumption or assessment of rent-free land.</p> <p>131.—To establish a periodically-recurring right.</p> <p>132.—To enforce payment of money charged upon immoveable property.</p>	<p><i>Part VIII.—</i> <i>Twelve years.</i> —<i>contd.</i></p>	
	Twelve years.	When the exclusion becomes known to the plaintiff.
	Ditto ...	When the arrears are payable.
	Ditto ...	When the right is denied.
	Ditto ...	When the right to resume or assess the land first accrues.
	Ditto ...	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto ...	When the money sued for becomes due.
<p><i>Explanation.</i>—The allowance and fees respectively called <i>mali-kana</i> and <i>haqqs</i> shall, for the purpose of this article, be deemed to be money charged upon immoveable property.</p>		
133.—To recover moveable property conveyed or bequeathed in trust, deposited, or pawned, and afterwards bought from the trustee, depositary, or pawnee for a valuable consideration.	Ditto ...	The date of the purchase.



THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
134.—To recover possession of immoveable property conveyed or bequeathed in trust, or mortgaged, and afterwards transferred by the trustee or mortgagee for a valuable consideration.	<i>Part VIII.— Twelve years —contd.</i>  Twelve years	The date of the transfer.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto ...	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold when the vendor was out of possession at the date of the sale.	Ditto ...	When the vendor is first entitled to possession.
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Ditto ...	When the judgment-debtor is first entitled to possession.
138.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	Ditto ...	The date when the sale becomes absolute.
139.—By a landlord to recover possession from a tenant.	Ditto ...	When the tenancy is determined.



THE FIRST SCHEDULE—*contd.*

## SECOND DIVISION: APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the Code of Criminal Procedure, 1898*, from a sentence of death passed by a Court of Session.	Seven days.	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or the Chief Court of the Punjab or the Chief Court of Lower Burma, in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.
152.—Under the Code of Civil Procedure, 1908,† to the Court of a District Judge.	Thirty days.	The date of the decree or order appealed from.
153.—Under the same Code,† to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Ditto ...	The date of the order.
154.—Under the Code of Criminal Procedure, 1898,* to any Court other than a High Court.	Ditto ...	The date of the sentence or order appealed from.
155.—Under the same Code,* to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days...	Ditto.

\* Act V. of 1898.

† Act V. of 1908.

THE FIRST SCHEDULE—*contd.*SECOND DIVISION: APPEALS—*contd.*

Description of appeal.	Period of limitation.	Time from which period begins to run.
156.—Under the Code of Civil Procedure, 1908,* to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days.	The date of the decree or order appealed from.
157.—Under the Code of Criminal Procedure, 1898,† from an order of acquittal.	Six months.	The date of the order appealed from.

\* Act V. of 1908.

† Act V. of 1898.

THE FIRST SCHEDULE—*contd.*

## THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the Code of Civil Procedure, 1908,* to set aside an award.	Ten days ...	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under the summary procedure referred to in section 128 (2) (f) of the same Code.*	Ditto ...	When the summons is served.
160.—For an order under the same Code,* to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days.	When the application for review is rejected.
161.—For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto ...	The date of the decree or order.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras, and Bombay, or the Chief Court of the Punjab or the Chief Court of Lower Burmah, in the exercise of its original Jurisdiction.	Twenty days.	Ditto

\* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance, or for failure to pay costs of service of process, or to furnish security for costs.	Thirty days.	The date of the dismissal.
164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i> .	Ditto ...	The date of the decree, or, where the summons was not duly served, when the applicant has knowledge of the decree.
165.—Under the Code of Civil Procedure, 1908.* by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto ...	The date of the dispossession.
166.—Under the same Code,* to set aside a sale in execution of a decree.	Ditto ...	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	Ditto ...	The date of the resistance or obstruction.
168.—For the re-admission of an appeal dismissed for want of prosecution.	Ditto ...	The date of the dismissal.

\* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
169.—For the re-hearing of an appeal heard <i>ex parte</i> .	Thirty days.	The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Ditto ..	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908,* for an order to set aside abatement.	Sixty days.	The date of the abatement.
172.—Under the same Code,* by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Ditto ..	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days.	The date of the decree or order.
174.—For the issue of a notice under the same Code,* to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.	Ditto ..	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months.	The date of the decree.

\* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

<i>Description of application.</i>	<i>Period of limitation.</i>	<i>Time from which period begins to run.</i>
176.—Under the same Code,* to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Six months.	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code,* to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ditto ...	The date of the death of the deceased defendant or respondent.
178.—Under the same Code,* for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court.	Ditto ...	The date of the award.
179.—By a person desiring to appeal under the same Code* to His Majesty in Council, for leave to appeal.	Ditto ...	The date of the decree appealed from.
180.—By a purchaser of immoveable property at a sale in execution of a decree, for delivery of possession.	Three years.	When the sale becomes absolute.
181.—Applications for which no period of limitation is provided elsewhere in this Schedule, or by section 48 of the Code of Civil Procedure, 1908.*	Ditto ...	When the right to apply accrues.

\* Act V, of 1908.



THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of Application.	Period of limitation.	Time from which period begins to run.
<p>182.—For the execution of a decree or order of any Civil Court not provided for by article 183, or by section 48 of the Code of Civil Procedure, 1908.*</p>	<p>Three years; or, where a certified copy of the decree or order has been registered, six years.</p>	<ol style="list-style-type: none"> <li>1. The date of the decree or order, or</li> <li>2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or</li> <li>3. (where there has been a review of judgment) the date of the decision passed on the review, or</li> <li>4. (where the decree has been amended) the date of amendment, or</li> <li>5. (where the provision next hereinafter mentioned has been made) the date of the order applying in accordance with law to the proper Court for execution, or to take some step in aid of execution, of the decree or order, or</li> <li>6. (where the notice next hereinafter mentioned has been issued) the date of issue</li> </ol>

\* Act V. of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION: APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183, or by section 48 of the Code of Civil Procedure, 1908*— <i>contd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years ( <i>ctd.</i> ).	<p>of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908,* or</p> <p>7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.</p> <p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But, where the decree or</p>

\* Act V, of 1908.

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of Application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183, or by section 48 of the Code of Civil Procedure, 1908*— <i>contd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years ( <i>ctd.</i> ).	<p>order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.</p>

\* Act V. of 1908.

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION: APPLICATIONS—*concl'd.*

Description of Application.	Period of limitation.	Time from which period begins to run.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183, or by section 48 of the Code of Civil Procedure, 1908*— <i>concl'd.</i>	Three years; or, where a certified copy of the decree or order has been registered, six years ( <i>cl'd.</i> )	<i>Explanation II.</i> —“Proper Court” means the Court whose duty it is to execute the decree or order.
183.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years.	When a present right to enforce the judgment, decree, or order accrues to some person capable of releasing the right:  Provided that, when the judgment, decree, or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the

\* Act V. of 1908.

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION: APPLICATIONS—*concl'd.*

Description of application.	Period of limitation.	Time from which period begins to run.
183.—To enforce a judgment, decree, or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council— <i>cont'd.</i>	Twelve years— <i>concl'd.</i>	twelve years shall be computed from the date of such revivor, payment, or acknowledgment, or the latest of such revivors, payments, or acknowledgments, as the case may be.

## THE SECOND SCHEDULE:

TERRITORIES REFERRED TO IN SECTION 31.

*(See section 31.)*

The Presidency of Fort St. George.

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency  
of Fort William.

The United Provinces of Agra and Oudh.

Burma.

The Central Provinces.

Ajmere-Merwara.

## THE THIRD SCHEDULE:

## ENACTMENTS REPEALED.

(See section 32.)

Year.	No.	Short title.	Extent of repeal.
1877 ...	XV.	The Indian Limitation Act, 1877.	The whole.
1877 ...	XVII.	The Punjab Courts Act, 1877.	So much as has not been repealed.
1879 ...	XII.	The Registration and Limitation Acts Amendment Act, 1879.	In the title, the words "and the Limitation Act, 1877;" and, after section 107, from the words "and whereas" to the end of the Act.
1881 ...	V.	The Probate and Administration Act, 1881.	Section 156.
1887 ...	IX	The Provincial Small Cause Courts Act, 1887.	Section 36.
1888 ...	VII.	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words, "and the Indian Limitation Act 1877," and, of section 66 so much as has not been repealed.*
1892 ...	VI.	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877," and section 1.
1899 ...	X.	The Carriers Act, 1899 ...	Section 3,
1900 ...	VI.	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900 ...	XI.	The Indian Limitation Amendment Act, 1900.	The whole.
1906 ...	IV.	The Presidency Small Cause Courts Act, 1906	Section 5.

\* The whole Act (so much as has not been repealed), is now repealed *in toto* by the new Registration Act (XVI. of 1908).





THE  
NEW CIVIL COURT MANUAL,  
BEING  
EDITION OF 1908  
*AS AMENDED UP TO DATE,*  
IN THREE VOLUMES.

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VOLUME II.:  
MISCELLANEOUS ACTS.

M TO W.

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COMPILED

BY

D. E. CRANENBURGH,

*PLEADER.*

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## PREFACE.

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THIS Edition of the Civil Court Manual has been published in three pocket volumes :

Volumes I. and II. contain such of the Acts of the Governor-General in Council as are most frequently referred to, arranged in alphabetical order.

Volume III, contains the Code of Civil Procedure.

In all the Acts contained in this edition, every amendment made up to date of publication has been carefully embodied in its proper place.

Considering that the amendments recently made in most of the Acts herein contained are numerous and important, the work should prove very useful and reliable.

D. E. CRANENBURGH.

*Aug. 6, 1901.*



# THE NEW CIVIL COURT MANUAL

IN THREE HANDY VOLUMES.

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- Married Women's Property Act (III. of 1874).
- Negotiable Instruments Act (XXVI. of 1881).
- Oaths Act (X. of 1873).
- Official Trustees Act (XVII. of 1864).
- Parsi Intestate Succession Act (XXI. of 1865).
- Parsi Marriage and Divorce Act (XV. of 1865).
- Partition Act (IV. of 1893).
- Powers of Attorney Act (VII. of 1882).
- Presidency Small Cause Courts Act (XV. of 1882).
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# ACT IX. OF 1875.

## The Indian Majority Act, 1875.\*

READ THE G.-G.'S ASSENT ON THE 2ND MARCH 1875.

### *An Act to amend the Law respecting the Age of Majority.*

WHEREAS, in the case of persons domiciled in British India, it is expedient to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority than now exists; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Indian Majority Act, 1875 :"

\* For the Statement of Objects and Reasons, see *Gazette of India*, 1874, Pt. V., p. 153; for *Proceedings in Council*, see *ibid*, Supplement, p. 668, and Extra Supplement dated 12th May 1874, p. 4, and *ibid*, 1875, Supplement, p. 333.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

- (1) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum. [The Lohardaga District included at this time the present District of Palamau, which was separated in 1894].—See *Gazette of India*, 1881, Pt. I., p. 504 :
- (2) The North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

It has been extended, by notification under s. 5 of the same Act, to British Baluchistan.—See *Gazette of India*, 1897, Pt. II., p. 60.

It has been declared in force in—

- (1) Upper Burma (except the Shan States) by Act XIII. of 1898, s. 4.
- (2) the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874). s. 3, as amended by Act XIII. of 1898, s. 16.

It has been applied to the Baluchistan Agency Territories.—See *Gazette of India*, 1897, Pt. I., p. 27.

It extends to the whole of British India, and, so far as regards subjects of her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty;

Local extent,

and it shall come into force and have effect only on the expiration of three months from the passing thereof.

Commencement and operation.

**2.** Nothing herein contained shall affect—

Savings.

(a) the capacity of any person to act in the following matters (namely)—marriage, dower, divorce, and adoption;

(b) the religion or religions, rites and usages of any class of Her Majesty's subjects in India; or

(c) the capacity of any person who, before this Act comes into force, has attained majority under the law applicable to him.

NOTE.—According to the Mahomedan law, a person becomes an adult on the expiration of his or her fifteenth year, unless symptoms of puberty appear at an earlier age. Among the Hindus minority terminates at the age of sixteen.

**3.** Subject as aforesaid, “every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI.\* of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age,”† shall, notwithstanding anything contained in the Indian Succession Act (No. X. of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years, and not before.

\* This reference to Ch. XXXI. of the old Civil Procedure Code should now mean to apply to Order XXXII. of Act V. of 1908.

† The words quoted have been substituted for the words, “every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards,” by the Guardians and Wards Act (VIII. of 1890), s. 52.



Subject, as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years, and not before.

4. In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

*Illustrations.*

(a.) Z is born in British India on the first day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice: Z attains majority at the first moment of the first day of January 1871.

(b.) Z is born in British India on the twenty-ninth day of February 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice: Z attains majority at the first moment of the twenty-eighth day of February 1873.

(c.) Z is born on the first day of January 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards: Z attains majority at the first moment of the first day of January 1868.

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# ACT III. OF 1874.\*

## Married Women's Property Act 1874.

[As modified up to August 1907.]

RECEIVED THE G.-G.'S ASSENT ON THE 24TH FEBRUARY 1874.

*An Act to explain and amend the Law relating to certain Married Women and for other purposes.*

WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January 1866, and for insurances on lives by persons married before or after that day :

Preamble.

And whereas by the Indian Succession Act, 1865,† section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried :

---

\* Act III. of 1874 has been declared in force in—

- (1) The Santhál Parganas (see the Santhál Parganas Settlement Regulation, III. of 1872, s. 3, as amended by the Santhál Parganas Justice Laws Regulation, III. of 1899 :
- (2) The Arakan Hill District (see the Arakan Hill District Laws Regulation, IX. of 1874, s. 3).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazáribágh, Lohárdaga, and Mámbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum (see *Gazette of India*, Oct. 22, 1881, Pt. I., p. 504). The District of Lohárdaga included at this time the Palamau District, which was separated in 1894.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Taráí (see *Gazette of India*, Sep. 23, 1876, Pt. I., p. 505) ; to the whole of Upper Burma except the Shan States (see Notification No. 132 *Burma Gazette*, 1893, Pt. I., p. 154).

For the Statement of Objects and Reasons, see *Gazette of India*, 1873, Pt. V., p. 457 ; for Proceedings in Council, see *ibid*, Extra Supplements, dated Aug. 2 and Sep. 6, 1873, respectively pp. 9 and 12, and *ibid*, 1874, Supplement, p. 239.

† Act X. of 1865.

4,000—11-9-1907.

III., '74.—I.

the office at which the insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court under Act No. XVII. of 1864 (*to constitute an office of Official Trustee*), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

#### *IV.—Legal Proceedings by and against Married Women.*

**7.\*** A married woman may maintain a suit in her own name

Married women may take for the recovery of property of any description which, by force of the said legal proceedings. Indian Succession Act, 1865† or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes, and orders in respect of such property as she would be liable to if she were unmarried.

**8.** If a married woman (whether married before or after the

Wife's liability for post-nuptial debts. first day of January 1866)‡ possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract, and continued unmarried at the execution of the decree.§

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\* Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 11, now repealed by the Married Women's Property Act, 1882, 45 and 46 Vict., c. 75).

† Act X of 1865.

‡ See the Indian Succession Act (X. of 1865), s. 33†.

§ *Archer v. Watkins*, 8 B. L. R., 372.

Provided that nothing herein contained shall affect the liability of a husband for debts contracted by his wife's agency, express or implied. . . . \*

*V.—Husband's Liability for Wife's Debts.*

9. † A husband married after the thirty-first day of December 1865 shall not, by reason only of wife's ante-nuptial debts. such marriage, be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if she had continued unmarried :

Provided that nothing contained in this section shall . . . . ‡  
 Proviso. invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

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\* In s. 8, the words, "or render a married woman liable to arrest or to imprisonment in execution of a decree," repealed by the Debtors Act (VI. of 1888), s. 9, have here been omitted.

† Compare the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 12.

‡ In s. 9, the words, "affect any suit instituted before the passing of this Act, nor," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.



# ACT XXVI. OF 1881.

## Negotiable Instruments.

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SCHEDULE. [*Repealed by Act XII. of 1891, Sch. I.*]

# ACT XXVI. OF 1881.

## Negotiable Instruments Act.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH DECEMBER 1881.

*An Act to define and amend the Law relating to Promissory Notes, Bills of Exchange, and Cheques.*

**Preamble.** WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange, and cheques; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

**Short title.** 1. This Act may be called "The Negotiable Instruments Act, 1881."

**Local extent.** It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1882, section 25,\* or affects any local usage relating to any instrument in an oriental language: Provided

**Saving of usages relating to hundis, &c.** that such usages may be excluded by any words in the body of the instrument, which indicate an intention

**Commencement.** that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March 1882.

#### 2. [Repealed by Act XII. of 1891.]

**Interpretation-clause.**

3. In this Act—

"Banker."

"Banker" includes also persons or a corporation or company acting as bankers; and

"Notary public" includes also any person appointed by the Governor-General in Council to perform

"Notary public."

the functions of a notary public under this Act.

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\* See Act XX. of 1882, s. 2.

## CHAPTER II.

## OF NOTES, BILLS, AND CHEQUES.

4. A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

*Illustrations.*

A signs instruments in the following terms :—

- (a.) "I Promise to pay B or order Rs. 500."
- (b.) "I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received."
- (c.) "Mr. B, I O U Rs 1,000."
- (d.) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- (e.) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
- (f.) "I promise to pay B Rs. 500 seven days after my marriage with C."
- (g.) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- (h.) "I promise to pay B Rs. 500, and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g), and (h), are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4 by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and section 4, although it includes future interest, or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given, or that payment is to be made, may be a "certain person" within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "Drawer," the person thereby directed to pay is called the "drawee."

When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor."

"When a bill of exchange has been noted or protested for non-acceptance or for better security,"\* and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

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\* The words quoted have been substituted by Act II. of 1885, s. 2 for the following: "When acceptance is refused, and the bill is protested for non-acceptance."

**8.** The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto.

"Holder."

Where the note, bill, or cheque, is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

**9.** "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange, or cheque if payable to bearer,

"Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

**10.** "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

"Payment in due course."

**11.** A promissory note, bill of exchange, or cheque, drawn or made in British India, and made payable in, or drawn upon any person resident in British India, shall be deemed to be an inland instrument.

Inland instrument.

**12.** Any such instrument, not so drawn, made, or made payable, shall be deemed to be a foreign instrument.

Foreign instrument.

**13.** A "negotiable instrument" means a promissory note, bill of exchange, or cheque, expressed to be payable to a specified person or his order, or to the order of a specified person or to the bearer thereof, or to a specified person or the bearer thereof.

"Negotiable instrument."

**14.** When a promissory note, bill of exchange, or cheque, is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

"Negotiation."

**15.** When the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

**Indorsement.**

**16.** If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument.

**Indorsement "in blank" and "in full."**

**"Indorsee."**

**17.** Where an instrument may be construed either as a promissory note or bill of exchange, the holder may, at his election, treat it as either, and the instrument shall be thenceforward treated accordingly.

**Ambiguous instruments.**

**18.** If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

**Where amount is stated differently in figures and words.**

**19.** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

**Instruments payable on demand.**

**20.** Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima-facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

**Inchoate stamped instruments.**

**21.** In a promissory note or bill of exchange the expressions  
 "At sight." "at sight" and "on presentment" mean  
 "On presentment." on demand. The expression "after  
 "After sight." sight" means, in a promissory note, after  
 presentment for sight, and, in a bill of exchange, after acceptance,  
 or noting for non-acceptance, or protest for non-acceptance.

"Maturity." **22.** The maturity of a promissory  
 note or bill of exchange is the date at  
 which it falls due.

Every promissory note or bill of exchange which is not expressed  
 to be payable on demand, at sight, or on  
 presentment, is at maturity on the third  
 day after the day on which it is expressed to be payable.

**23.** In calculating the date at which a promissory note or bill  
 of exchange, made payable a stated  
 number of months after date or after  
 sight, or after a certain event, is at  
 maturity, the period stated shall be held to terminate on the day of  
 the month which corresponds with the day on which the instrument  
 is dated or presented for acceptance or sight, or noted for non-  
 acceptance, or protested for non-acceptance, or the event happens, or,  
 where the instrument is a bill of exchange made payable a stated  
 number of months after sight, and has been accepted for honour,  
 with the day on which it was so accepted. If the month in which  
 the period would terminate has no corresponding day, the period  
 shall be held to terminate on the last day of such month.

#### *Illustrations.*

(a.) A negotiable instrument, dated 29th January 1878, is made  
 payable at one month after date. The instrument is at maturity on the  
 third day after the 28th February 1878.

(b.) A negotiable instrument, dated 30th August 1878, is made  
 payable three months after date. The instrument is at maturity on the  
 3rd December 1878.

(c.) A promissory note or bill of exchange, dated 31st August 1878,  
 is made payable three months after date. The instrument is at maturity  
 on the 3rd December 1878.

**24.** In calculating the date at which a promissory note or  
 bill of exchange made payable a certain  
 number of days after date or after sight,  
 or after a certain event, is at maturity, the  
 Calculating maturity of  
 bill or note payable so many  
 days after date or sight.



day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

**25.** When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business-day.

*Explanation.*—The expression “public holiday” includes Sundays: New Year’s day, Christmas-day: if either of such days fall on a Sunday, the next following Monday: Good Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

## CHAPTER III.

### PARTIES TO NOTES, BILLS, AND CHEQUES.

**26.** Every person capable of contracting, according to the Capacity to make, &c., law to which he is subject, may bind promissory notes, &c. himself and be bound by the making, drawing, acceptance, indorsement, delivery, and negotiation of a promissory note, bill of exchange, or cheque.

A minor may draw, indorse, deliver, and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse, or accept such instrument except in cases in which, under the law for the time being in force, they are so empowered.

**27.** Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

A general authority to transact business, and to receive and discharge debts, does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

**28.** An agent who signs his name to a promissory note, bill of exchange, or cheque, without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

**29.** A legal representative of a deceased person, who signs his name to a promissory note, bill of exchange, or cheque, is liable personally thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

**30.** The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

**31.** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

**32.** In the absence of a contract to the contrary, the maker of a promissory note and the acceptor of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

**33.** No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

**34.** Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

**35.** In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity without, in such liability of indorser. indorsement expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor, or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

**36.** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

**37.** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor, are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer, or acceptor, as the case may be.

Maker, drawer, and acceptor principals.

**38.** As between the parties, so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

#### *Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C C to D, and D to E. As between E and B, B is the principal debtor, and A, C, and D, are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor, and D is his surety.

**39.** When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Suretyship.

**40.** Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior liability.

Discharge of indorser's liability.

party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration.*

As is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B,"

Second indorsement, "Peter Williams,"

Third indorsement, "Wright & Co.,"

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario, and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

**41.** An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

**42.** Acceptor of a bill of exchange drawn in a fictitious name, and payable to the drawer's order, is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

**43.** A negotiable instrument made, drawn, accepted, indorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But, if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted, or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument, who has induced another party to make, draw, accept, indorse, or transfer the same to him for a consideration which he has failed to pay or perform in full

shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

**44.** When the consideration for which a person signed a promissory note, bill of exchange, or cheque, consisted of money, and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

*Illustration.*

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

**45.** Where a part of the consideration for which a person signed a promissory note, bill of exchange, or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

**45A.\*** Where a bill of exchange has been lost before it is over-due, the person who was the holder of lost bill. it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

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\* S. 45A has been inserted by Act II. of 1885, s. 3.

## CHAPTER IV.

## OF NEGOTIATION.

**46.** The making, acceptance, or indorsement of a promissory note, bill of exchange, or cheque, is completed by delivery, actual or constructive.

Delivery.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting, or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange, or cheque payable to bearer, is negotiable by the delivery thereof.

A promissory note, bill of exchange, or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

**47.** Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to bearer, is negotiable by delivery thereof.

Negotiation by delivery.

*Exception.*—A promissory note, bill of exchange, or cheque delivered on condition that it is not to take effect except in a certain event, is not negotiable (except in the hands of a holder for value without notice of the condition), unless such event happens.

*Illustrations.*

(a.) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b.) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

**48.** Subject to the provisions of section 58, a promissory note, bill of exchange, or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

**49.** The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

**50.** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

### *Illustrations.*

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a.) "Pay the contents to C only."
- (b.) "Pay C for my use."
- (c.) "Pay C or order for the account of B."
- (d.) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e.) "Pay C."
- (f.) "Pay C value in account with the Oriental Bank."
- (g.) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

**51.** Every sole maker, drawer, payee, or indorsee, or all of several joint makers, drawers, payees, or indorsees of a negotiable instrument, may, if the negotiability of such instruments has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

*Explanation.*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate as instrument unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability or makes it conditional. Indorser who excludes his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability, and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name, adding the words—

"Without recourse."

Upon this indorsement he incurs no liability.

(b.) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

53. A holder of a negotiable instrument, who derives title from a holder in due course, has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof, even although originally payable to order.

55. If a negotiable instrument, after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.



**56.** No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot, by delivery only, negotiate instrument indorsed by deceased.

**57.** The legal representative of a deceased person cannot negotiate, by delivery only, a promissory note, bill of exchange, or cheque payable to order, and indorsed by the deceased, but not delivered.

**58.** When a negotiable instrument has been lost, or has been obtained from any maker, acceptor, or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor, or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

**59.** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a bill, accommodation note or promissory note or bill of exchange made, drawn, or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

#### *Illustration.*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

**60.** A negotiable instrument may be negotiated (except by the maker, drawee, or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee, or acceptor at or after maturity, but not after such payment or satisfaction.

## CHAPTER V.

### OF PRESENTMENT.

**61.** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.\*

**62.** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time, after it is made and in business-hours on a business-day. In default of such presentment, no party thereto is liable thereon to the person making such default.

**63.** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

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\* The last para. of s. 61 and the second para. of s. 64 have been added by Act II. of 1885, s. 4.

**64.** Promissory notes, bills of exchange, and cheques, must be presented for payment to the maker, acceptor, or drawee thereof, respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post-office by means of a registered letter is sufficient.\*

*Exception.*—Where a promissory note is payable on demand, and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

**65.** Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment for payment of instrument payable after date of sight.

**66.** A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

**67.** A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

**68.** A promissory note, bill of exchange, or cheque, made, drawn, or accepted, payable at a specified place, and not elsewhere, must, in order to charge any party thereto, be presented for payment at that place.

**69.** A promissory note or bill of exchange made, drawn, or accepted, payable at a specified place, must, in order to charge the maker or drawer thereof, be presented for payment at that place.

**70.** A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the exclusive place specified.

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\* The last para. of s. 61 and the second para. of s. 64 have been added by Act II. of 1885, s. 4.

place of business (if any), or at the usual residence of the maker, drawee, or acceptor thereof, as the case may be.

**71.** If the maker, drawee, or acceptor of a negotiable instrument, has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

**72.** "Subject to the provisions of section 84,"\* a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

**73.** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

**74.** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

**75.** Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, agent, representative of maker, or acceptor, as the case may be, deceased, or assignee of or, where the drawee, maker, or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

**76.** No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment in any of the following cases :—

(a) if the maker, drawee, or acceptor, intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business-day during the usual business-hours, or,

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\* The words quoted have been added by the Negotiable Instruments Act Amendment Act (VI. of 1897), s. 2.

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or,

if the instrument not being payable at any specified place, he cannot, after due search, be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part-payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

**77.** When a bill of exchange, accepted payable at a specified

Liability of banker for bank, has been duly presented there for negligently dealing with bill payment and dishonoured, if the banker presented for payment. so negligently or improperly keeps, deals with, or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

## CHAPTER VI.

### OF PAYMENT AND INTEREST.

**78.** Subject to the provisions of section 82, clause (c), payment

To whom payment should of the amount due on a promissory note, be made. bill of exchange, or cheque, must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

**79.** When interest at a specified rate is expressly made payable

Interest when rate speci- on a promissory note or bill of exchange, fied. interest shall be calculated at the rate specified on the amount of the principal money due thereon from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

**80.** When no rate of interest is specified in the instrument, Interest when no rate interest on the amount due thereon shall, specified. except in cases provided for by the Code of Civil Procedure, section 532,\* be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

**81.** Any person liable to pay, and called upon by the holder thereof to pay the amount due on a Delivery of instrument on payment, or indemnity in case of loss. promissory note, bill of exchange, or cheque, is before payment, entitled to have it shown, and is, on payment, entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

## CHAPTER VII.

### OF DISCHARGE FROM LIABILITY ON NOTES, BILLS, AND CHEQUES.

**82.** The maker, acceptor, or indorser, respectively, of a Discharge from liability— negotiable instrument, is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and by cancellation ; to all parties claiming under such holder ;

(b) to a holder thereof who otherwise discharges such maker, acceptor, or indorser, and to all parties deriving title under such holder after by release ; notice of such discharge ;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such by payment. maker, acceptor, or indorser, makes payment in due course of the amount due thereon.

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\* See Act XIV. of 1882, s. 3.

**83.** If the holder of a bill of exchange allows the drawee discharge by allowing more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

**84.\*** (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

#### *Illustrations.*

(a.) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b.) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

**85.** Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Cheque payable to order.

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\* Section 84 has been substituted for the original section by Act VI. of 1897, s. 3.

- (c) a statement that payment or acceptance or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer (if any), or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour; and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour, or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.\*

**102.** When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given, instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

**103.** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

**104.** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

**104A.** For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding;

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\* This para has been added by Act II. of 1885, s. 5.



and the formal protest may be extended at any time thereafter as of the date of the noting.\*

## CHAPTER X.

### OF REASONABLE TIME.

**105.** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

**106.** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post, or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

**107.** A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI.

### OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

**108.** When a bill of exchange has been noted or protested for non-acceptance, or for better security, any person, not being a party already liable thereon, may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.†

\* S. 104A has been inserted by Act II. of 1885, s. 6.

† The second sentence of this section has been repealed by Act II. of 1885, s. 7, and has, therefore, been omitted.

**109.** A person desiring to accept for honour must, by writing  
 How acceptance for on the bill under his hand, declare that he  
 honour must be made. accepts under protest the protested bill for  
 the honour of the drawer, or of a particular indorser whom he names,  
 or generally for honour.\*

**110.** Where the acceptance does not express for whose honour  
 Acceptance not specifying it is made, it shall be deemed to be made  
 for whose honour it is made. for the honour of the drawer.

**111.** An acceptor for honour binds himself to all parties  
 Liability of acceptor for subsequent to the party for whose honour  
 honour. he accepts to pay the amount of the bill if  
 the drawee do not : and such party and all prior parties are liable, in  
 their respective capacities, to compensate the acceptor for honour for  
 all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill  
 unless it is presented or (in case the address given by such acceptor  
 on the bill is a place other than the place where the bill is made payable)  
 forwarded for presentment, not later than the day next after the day  
 of its maturity.

**112.** An acceptor for honour cannot be charged unless the bill  
 When acceptor for honour has, at its maturity, been presented to the  
 may be charged. drawee for payment, and has been dis-  
 honoured by him, and noted or protested for such dishonour.

**113.** When a bill of exchange has been noted or protested for  
 Payment for honour. non-payment, any person may pay the  
 same for the honour of any party liable to  
 pay the same, provided that the person so paying, "or his agent in  
 that behalf,"† has previously declared before a notary public the party  
 for whose honour he pays, and that such declaration has been record-  
 ed by such notary public.

**114.** Any person so paying is entitled to all the rights, in res-  
 Right of payer for honour. pect of the bill, of the holder at the time  
 of such payment, and may recover, from  
 the party for whose honour he pays, all sums so paid with interest  
 thereon, and with all expenses properly incurred in making such  
 payment.

\* As amended by Act II. of 1885, s. 8.

† The words quoted have been inserted by Act II. of 1885, s. 9.

**115.** Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

**116.** A drawee, in case of need, may accept and pay the bill of exchange without previous protest.

## CHAPTER XII.

### OF COMPENSATION.

**117.** The compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532\*) be determined by the following rules:—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting, and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an indorser, who, being liable, has paid the amount due on the same, is entitled to the amount, so paid, with interest, at six per centum per annum, from the date of payment until tender of realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the

\* See Act XIV. of 1882, s. 3.

protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

## CHAPTER XIII.

### SPECIAL RULES OF EVIDENCE.

Presumption as to negotiable instruments—

**118.** Until the contrary is proved, the following presumptions shall be made:—

(a) that every negotiable instrument was made or drawn for consideration; and that every such instrument, when it has been accepted, indorsed, negotiated, or transferred, was accepted, indorsed, negotiated, or transferred for consideration;

(b) that every negotiable instrument as to date; bearing a date was made or drawn on such date;

(c) that every accepted bill of exchange was accepted within a reasonable time after its date, and before its maturity;

(d) that every transfer of a negotiable instrument was made before its maturity;

(e) that the indorsements appearing upon a negotiable instrument as to order of indorsements; were made in the order in which they appear thereon;

(f) that a lost promissory note, bill of exchange, or cheque, was duly stamped;

(g) that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained, from the maker or acceptor thereof, by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

**119.** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Presumption on proof of protest.

**120.** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

**121.** No maker of a promissory note, and no acceptor of a bill of exchange payable to, or to the order of a specified person, shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

**122.** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

## CHAPTER XIV.

### OF CROSSED CHEQUES.

**123.** Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

**124.** Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

**125.** Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally, or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

**126.** Where a cheque is crossed generally, the banker on whom Payment of cheque crossed generally. it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, for collection.

**127.** Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

**128.** Where the banker, on whom a crossed cheque is drawn, has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to, and placed in, if the amount of the cheque had been paid to, and received by the true owner thereof.

**129.** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent, for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

**130.** A person taking a cheque crossed generally or specially, bearing "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

**131.** A banker, who has, in good faith, and without negligence, received payment, for a customer, of a cheque crossed generally or specially to himself, shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

## CHAPTER XV.

### OF BILLS IN SETS.

**132.** Bills of exchange may be drawn in parts, each part being numbered, and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

**133.** As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI.

### OF INTERNATIONAL LAW.

**134.** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange, or cheque, is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

#### *Illustration.*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

**135.** Where a promissory note, bill of exchange, or cheque, is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour, and what notice of dishonour is sufficient.

*Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

**136.** If a negotiable instrument is made, drawn, accepted, or indorsed out of British India, but in accordance with the law of British India, the circumstance, that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent acceptance or indorsement made thereon in British India.

**137.** The law of any foreign country regarding promissory notes, bills of exchange, and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

## CHAPTER XVII.\*

## NOTARIES PUBLIC.

**138.** The Governor-General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act, and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

**139.** The Governor-General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

## SCHEDULE.

*[Repealed by Act XII. of 1891, Sch. I.]*

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\* Ch. XVII. has been inserted by Act II. of 1885, s. 10.







# ACT X. OF 1873.\*

## The Indian Oaths Act, 1873.

[As modified up to March 1900.]

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

*An Act to consolidate the Law relating to Judicial Oaths,  
and for other purposes.*

WHEREAS it is expedient to consolidate the law relating to  
judicial oaths, affirmations, and de-  
clarations, and to repeal the law relat-  
ing to official oaths, affirmations, and declarations; It is hereby  
enacted as follows:—

Preamble.

### I.—Preliminary.

Short title.

1. This Act may be called “The  
Indian Oaths Act, 1873 :”

Local extent.

It extends to the whole of British India, and, so far as regards  
subjects of Her Majesty, to the territories  
of Native Princes and States in alliance  
with Her Majesty.

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\* For the Statement of Objects and Reasons, see *Gazette of India*, 1873, Pt. V., p. 17; for Proceedings in Council, see *ibid*, 1872, Supplement, p. 889; *ibid*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395, and 410; *ibid*, 1873, Extra Supplement, pp. 1 to 8.

Act X. of 1873 has been declared in force in—

- (1) the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886);
- (2) the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3;
- (3) Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1816), s. 6;
- (4) British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3.
- (5) Angul and the Khondmals (with an exception) by the Angul District Regulation (1. of 1894), s. 3.

It has further been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

The District of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (the District of

[Commencement.] Repealed by the Repealing Act (XII. of 1876).

2. [Repeal of enactments.] Repealed by the Repealing Act (XII. of 1873).

3. Nothing herein contained applies to proceedings before  
 Saving of certain oaths and Courts-martial,\* or to oaths, affirmations,  
 affirmations. or declarations prescribed by any law  
 which, under the provisions of the Indian Councils Act,† 1861, the  
 Governor-General in Council has not power to repeal.

## II.—Authority to administer Oaths and Affirmations.

4. The following Courts and persons are authorized to administer, by themselves or by an officer  
 Authority to administer oaths and affirmations. empowered by them in this behalf, oaths  
 and affirmations in discharge of the duties, or in exercise of the  
 powers, imposed or conferred upon them respectively by law:—

(a) All Courts and persons having, by law or consent of parties, authority to receive evidence:

(b) The Commanding Officer of any military station occupied by troops in the service of Her Majesty:

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

Lohardaga then included the Palmau District, separated in 1894).—See *Gazette of India*, 1881, Pt. I., p. 504.

The North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

The Scheduled Districts in Ganjam and Vizagapatam, see *Fort St. George Gazette*, 1898, Pt. I., p. 666, and *Gazette of India*, 1898, Pt. I., p. 869.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of Coorg.—See *Gazette of India* 1876, Pt. I., p. 417.

\* See the Indian Articles of War (Act V. of 1869), the Indian Volunteers Act (XX. of 1869), and the Indian Marine Act (XIV. of 1887).

† Stat. 24 & 25 Vict., c. 67.

### III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or affirmations shall be made by the following persons:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons, or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

6. Where the witness, interpreter, or juror is a Hindu or Muhammadan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror shall make an oath.

### IV.—Forms of Oaths and Affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may, from time to time, prescribe.\*

\* For forms prescribed in—

Bombay,—see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. xxxii ;

Burma,—see Burma Laws List, Ed. 1897, p. 47.

Madras,—see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 25 ;

N.-W. P. and Oudh,—see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 42 ;

Central Provinces,—see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

[*Explanation. Repealed by Act VI. of 1900.*]

8. If any party to, or witness in, any judicial proceeding offers Power [of Court to tender to give evidence on oath or solemn certain oaths. affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may ask party or witness whether he will make oath proposed by opposite party. or the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation :

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

11. The evidence so given shall, against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the refusal to make oath.

oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

*V.—Miscellaneous.*

**13.** No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered shall invalidate any proceeding, or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

**14.** Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.\*

**15.** The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words, "or affirmation," were inserted.

**16.** Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

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SCHEDULE.

*[Repealed by the Repealing Act (XII. of 1873).]*

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\* Compare the Indian Penal Code (Act XLV. of 1860), s. 191.

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# THE OFFICIAL TRUSTEES ACT, 1913.

## ACT NO. II. OF 1913.

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THE SCHEDULE—ENACTMENTS  
REPEALED.

## THE OFFICIAL TRUSTEES ACT, 1913.

## ACT NO. II. OF 1913.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the G.-G.'s assent on the 27th February 1913.**An Act to consolidate and amend the Law constituting the office of Official Trustee.*

WHEREAS it is expedient to consolidate and amend the law constituting the office of the Official Trustee; It is hereby enacted as follows :—

## PART I.

## PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Official Trustees Act, 1913.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also to all British and Indian subjects of His Majesty in the territories of Native States in India.

(3) It shall come into force on such date as the Governor General in Council, by notification in the Gazette of India, may direct.

Interpretation clause.

2. In this Act unless there is anything repugnant in the subject or context,—

(1) "Government" means the Governor General in Council, so far as the Act relates to the Presidency of Bengal, and the Local Governments of Madras and Bombay, respectively, so far as the Act relates to those Presidencies :

(2) "High Court" means His Majesty's High Courts of Judicature at Fort William in Bengal, Madras and Bombay, respectively, in the exercise of their original civil jurisdiction.

(3) "Official Gazette" means, in the case of the Presidency of Bengal, the Gazette of India, in the case of the Presidency of Madras, the Fort St. George Gazette, and in the case of the Presidency of Bombay, the Bombay Government Gazette :

- (4) "Prescribed" means prescribed by rules under this Act:
- (5) (a) "Presidency of Bengal" includes the territories for the time being under the government of the Governor of Fort William in Bengal in Council, the United Provinces of Agra and Oudh, the Provinces of the Punjab, Burma, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, the Province of Delhi, Ajmer and Merwara, the Andaman and Nicobar Islands, and such of the territories of any Native State as the Governor General in Council may by notification in the Gazette of India direct,
- (b) "Presidency of Bombay" includes the territories for the time being under the Government of the Governor of Bombay in Council, the Province of British Baluchistan, and such of the territories of any Native State as the Governor-General in Council may by notification in the Gazette of India direct,
- (c) "Presidency of Madras" includes the territories for the time being under the Government of the Governor of Fort St. George in Council, the Province of Coorg, and such of the territories of any Native State as the Governor General in Council may by notification in the Gazette of India direct.
- (6) "Presidency" means any of the Presidencies mentioned in clause (5).

3. For the purposes of this Act the High Court at a Presidency-town shall have jurisdiction throughout the Presidency.

Extent of jurisdiction of High Courts.

## PART II.

### THE OFFICE OF OFFICIAL TRUSTEE.

4. (1) In each of the Presidencies of Bengal, Madras and Bombay, the Government shall appoint an Official Trustee.

Official Trustees.

(2) No person shall be appointed to the office of Official Trustee of any of the said Presidencies who is not—

(a) a Barrister; or

(b) an Advocate, Attorney or Vakil enrolled by a High Court; or

(c) a person holding the office of Deputy Administrator General at the commencement of this Act.

(3) The said Official Trustees shall be called respectively, the Official Trustee of Bengal, the Official Trustee of Madras and the Official Trustee of Bombay.

5. The Government may appoint a Deputy or Deputies to assist the Official Trustee; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Official Trustee.

6. The Official Trustee shall be a corporation sole by the name of the Official Trustee of the Presidency for which he is appointed and, as such Official Trustee, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

Official Trustee to be corporation sole, to have perpetual succession and official seal, and to sue and be sued in his corporate name.

### PART III.

#### RIGHTS, POWERS, DUTIES AND LIABILITIES OF OFFICIAL TRUSTEE.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

(a) act as an ordinary trustee;

(b) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities and be entitled to the same rights and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such conditions as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors, nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be trustee along with any other person.

8. (1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust :

Official Trustee may with consent be appointed trustee of settlement by grantor.

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

9. When the Official Trustee has by that name or any other sufficient description been appointed trustee as trustee by will, the executor of the will of such testator or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee; and, if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust

to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

**10.** (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may on application make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees' and Mortgagees' Powers Act, 1866,\* or the Indian Trusts Act,† 1882.

**11.** (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property :

Provided that the consent of the Official Trustee shall be recited in the same instrument and that such instrument shall be duly executed by him.

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\* Act XXVIII. of 1866.

† Act II. of 1882.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person who may pay to Official Trustee legacy, share, etc., of infant or lunatic, by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable, or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent:

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

Official Trustee not to be required to give bond or security. 13. (1) No Official Trustee shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

14. The entry of the Official Trustee by that name in the books of a company shall not constitute notice of a trust; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation; and, in dealing with property, the fact that the person dealt with is the Official Trustee shall not of itself constitute notice of a trust.



**15. (1)** The revenues of the Government of India shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues of the Government of India, be subject to any liability.

(2) Nothing in sub-section (1) shall be deemed to render the revenues of the Government of India or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

**16.** Nothing in section 80 of the Code of Civil Procedure,\* Notice of suit not required 1908, shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

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## PART IV.

### FEES.

**17. (1)** There shall be charged in respect of the duties of the Official Trustee such fees, whether by way of percentage or otherwise, as the Government may prescribe:

Fees.

Provided that in the case of a trust accepted by the Official Trustee before the commencement of this Act the fees prescribed under this section shall not exceed the fees leviable in respect of such trust under the Official Trustees Act,† 1864, as subsequently amended.

(2) The fees under this section may be at different rates for different properties or classes of properties or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act (including such sum as Government may

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\* Act V. of 1908.

† Act XVII. of 1864.

determine to be required to insure the revenues of the Government of India against loss under this Act.)

18. (1) All expenses which might be retained or paid out of the trust fund, if the Official Trustee were a private trustee, shall be so retained or paid, and any fees leviable under this Act shall be retained or paid in like manner as and in addition to such expenses.

(2) The Official Trustee shall transfer and pay to such authority and in such manner and at such times as the Government may prescribe, all fees received by him under this Act, and the same shall be carried to the account and credit of the Government of India.

## PART V.

### AUDIT.

19. (1) The accounts of the Official Trustee shall be audited at least once annually and at any other time if the Government so direct by the prescribed person and in the prescribed manner.

Auditors to be appointed to examine Official Trustee's accounts, etc., and to report to Government.

(2) The auditor shall examine such accounts, and shall forward to Government a statement thereof in the prescribed form, together with a report thereon and a certificate signed by him showing—

- (a) whether the accounts contain a full and true account of everything which ought to be contained therein, and
- (b) whether the books, which by any rules made under this Act are directed to be kept by the Official Trustee, have been duly and regularly kept, and
- (c) whether the trust funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Official Trustee has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

Auditor's power to summon witnesses and to call for documents.

20. (1) Every auditor shall have the powers of a Civil Court under the Code of Civil Procedure,\* 1908,

\* Act V. of 1908.

- (a) to summon any person whose presence he may think necessary to attend him from time to time, and
- (b) to examine any person, on oath to be by him administered, and
- (c) to issue a commission for the examination on interrogatories or otherwise of any person, and
- (d) to summon any person to produce any document or thing, the production of which appears to be necessary for the purposes of such audit or examination.

(2) Any person who, when summoned, refuses, or without reasonable cause neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code,\* and the auditor shall report every case of such refusal or neglect to Government.

**21.** The cost of and incidental to every such audit and examination shall be determined in accordance with rules made by the Government and shall be defrayed in the prescribed manner.

**22.** Every beneficiary under a trust which is being administered by the Official Trustee shall, subject to such conditions and restrictions as may be prescribed, be entitled, at all reasonable times, to inspect the accounts of such trust, and the report and certificate of the auditor and, on payment of the prescribed fee, to be furnished with copies thereof or extracts therefrom and nothing in the Indian Trusts Act,† 1882, shall affect the provisions of this section.

## PART VI.

### MISCELLANEOUS.

**23.** When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after

Transfer to Government of accumulations in the hands of Official Trustee.

\* Act XLV. of 1860.

† Act II. of 1882.

the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government of India:

Provided that no such moneys shall be so transferred if any suit or proceeding is pending in respect thereof in any Court.

**24. (1)** If any claim is made to any moneys so transferred

Mode of proceeding by and such claim is established to the claimant to recover money satisfaction of the prescribed authority, so transferred.

the Government of India shall pay to the claimant the amount in respect of which the claim is established

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the Secretary of State for India in Council, and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings.

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

Power of High Court to make orders in respect of property vested in Official Trustee.

**25.** The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or the interest or produce thereof.

**26.** Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

Who may apply for order under Act.

Order of Court to have effect of a decree.

**27.** Any order made by a High Court under this Act shall have the same effect as a decree.

**28.** The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exerciseable by him, incur expenditure—

General powers of administration.

- (a) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him; and
- (b) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

Transfer of trust property  
by Official Trustee to original  
trustee or any other trustee.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

- (a) the original trustee (if any); or
- (b) any other lawfully appointed trustee; or
- (c) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer:

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

30. (1) The Government shall make rules for carrying into effect the objects of this Act and for regulating the proceedings of the Official Trustee in the discharge of his duties.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the accounts to be kept by the Official Trustee and the audit and inspection thereof;
- (b) the safe custody, and deposit of the funds and securities which come into the hands of the Official Trustee;
- (c) the remittance of sums of money in the hands of the Official Trustee in cases in which such remittances are required;
- (d) the statements, schedules and other documents to be submitted by the Official Trustee to Government or to any other authority and the publication of such statements, schedules or other documents;

- (e) the realization of the cost of preparing any such statements, schedules or other documents;
- (f) subject to the provisions of this Act, the fees to be paid thereunder and the collection and accounting for any fees so fixed;
- (g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed;
- (h) the manner in which summonses issued under the provisions of section 20 are to be served and the payment of the expenses of any persons summoned or examined under the provisions of this Act and of any expenditure incidental to such examination;
- (i) the acceptance by the Official Trustee of trusts for religious purposes and trusts which involve the management or carrying on of business; and
- (j) any matter in this Act directed to be prescribed.

(3) Rules made under the provisions of this section shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act.

**31. (1)** Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council may, by notification in the Gazette of India,—

- (a) remove any of the territories included in the Presidency of Bengal from such Presidency and constitute the same into provinces for the purposes of this Act;
- (b) direct that for the purposes of this Act any of the territories of any Native State in India shall be included in any Province so constituted; and
- (c) appoint any person qualified in accordance with the provisions of sub-section (2) of section 4, or who holds office under Government to be an Official Trustee for any such Province, to be called the Official Trustee of the Province,

and subject to the provisions of this section the following consequences shall thereupon ensue, namely:—

(i) the Official Trustee of a Province shall by that name have the like rights, powers, privileges and liabilities, and perform the like duties in the Province as the Official Trustee of the Presidency within which such territories were included had and performed as Official Trustee therein, and shall be deemed to be his successor in office:

(ii) the powers and duties of the Government under this Act shall, as regards the Province, be exercised and discharged by the Governor-General in Council, or by such Local Government as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf; and the Gazette of the Government exercising and discharging such powers and duties shall be the official Gazette of the Province for the purposes of this Act:

(iii) the powers and duties assigned by the foregoing provisions of this Act to the High Court shall be exercised and discharged in respect of such Province by such Court as the Governor-General in Council may, by notification in the Gazette of India, appoint in this behalf:

(iv) in the foregoing provisions of this Act, the word "Presidency" shall be deemed to include a province; and

(v) generally, the provisions of the foregoing sections with respect to the High Court and the provisions of this Act and of any other enactment for the time being in force with respect to the Official Trustee of a Presidency shall, in relation to a Province, be construed so far as may be to apply to the Court and the Official Trustee respectively appointed for the Province under this section.

(2) Any proceeding which was commenced before the publication of the notification constituting the province and to or in which the Official Trustee of any Presidency within which any territories constituted into a Province are situate was a party or was otherwise concerned shall be continued as if the notification had not been published.

(3) If by reason of the constitution of provinces for the purposes of this Act it appears to the Governor-General in

Council that any property vested in the Official Trustee of any Presidency should be vested in the Official Trustee of a Province, he may direct that the property shall be so vested, and thereupon it shall vest in the Official Trustee of the Province as fully and effectually for the purposes of this Act as if it had originally been vested in him under this Act.

(4) If in accordance with the provisions of this section territories have been removed from the Presidency of Bengal and constituted a Province for the purposes of this Act, the Governor-General in Council may, by notification in the Gazette of India, direct that as regards the Presidency of Bengal excluding the territories so removed the powers and duties of the Government under the Act shall be exercised and discharged by the Local Government of Bengal, and that the official Gazette shall be the Calcutta Gazette.

(5) Upon the rescission of a notification constituting a Province under sub-section (1), the territories comprised therein shall again form part of the Presidency within which they were originally included, the office of Official Trustee for the Province shall determine and all properties vested in and all proceedings by or against such Official Trustee pending at the date of the rescission shall vest in and be carried on by or against such Official Trustee or Official Trustees as the Governor-General in Council may direct.

**32.** Nothing contained in this Act shall be deemed to affect Saving of provisions of the provisions of the Indian Registration Act, 1908. tion Act,\* 1908.

**33.** The enactments specified in the Schedule are hereby Repeals. repealed to the extent specified in the fourth column thereof:

Provided that any property subject to a trust by or in pursuance of any such enactment vested in any Official Trustee at the commencement of this Act shall be deemed to be vested in the Official Trustee under this Act to be held by him upon the same trusts as those upon which such property was held before such commencement.

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\* Act XVI. of 1908.



## THE SCHEDULE.

## ENACTMENTS REPEALED.

*(See section 33.)*

Year.	No.	Short title.	Extent of repeal.
1864	...	XVII. The Official Trustees Act, 1864.	So much as has not already been repealed.
1850	...	II. The Probate and Administration Act, 1850.	So much of the title and preamble as relates to the Official Trustees' Act, 1864, and sections 1 to 8.
1902	...	V. The Administrators General and Official Trustees Act, 1902.	So far as it refers to the office of Official Trustee, or Deputy Official Trustee.

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The Cranenburgh Law-publishing Press.



# ACT XXI. OF 1865.\*

## The Pársi Intestate Succession Act, 1865.\*

RECEIVED THE G.-G'S ASSENT ON THE 10TH APRIL 1865.

*An Act to define and amend the Law relating to Intestate Succession among the Pársis.*

WHEREAS it is expedient to define and amend the law relating  
to intestate succession among the Pársis;  
Preamble. It is enacted as follows:—

\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

For Statement of Objects and Reasons of the Bill, which was passed into law as Act XX. of 1865, see *Gazette of India* 1865, p. 219; for proceedings relating to the Bill, see *ibid* supplement, pp. 68, 99, 113, 154.

Act XXI. of 1865 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has also been declared to be in force in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

- (1) Sindh (see *Gazette of India*, Dec. 4, 1880, Pt. I., p. 672).
- (2) West Jalpáiguri (see *Gazette of India*, 1881, Pt. I., p. 74).
- (3) The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504).
- (4) Kumáon and Garhwál (see *Gazette of India*, 1876, Pt. I., p. 605).
- (5) The Scheduled Portion of the Mirzápur District (see *Gazette of India*, 1879, Pt. I., p. 383).
- (6) Jaunsar Bawár (see *Gazette of India*, 1879, Pt. I., p. 382).
- (7) The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán (see *Gazette of India*, 1886, Pt. I., p. 48).
- (8) Ajmere and Merwára (see *Gazette of India*, 1878, Pt. I., p. 380).
- (9) The District of Silhat (see *Gazette of India*, 1879, Pt. I., p. 631).
- (10) The rest of Assam (except the North Lushai Hills) (see *Gazette of India*, 1897, Pt. I., p. 299).

It has been declared, by notification under s. 3 (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul (see *Gazette of India*, 1866, Pt. I., p. 301).

It has been extended by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Taráí (see *Gazette of India*, 1876, Pt. I., p. 505).

**1.** Where a Pârsi dies leaving a widow and children, the property of which he shall have died intestate shall be divided among the widow and children, so that the share of each son shall be double the share of the widow, and that her share shall be double the share of each daughter.

**2.** Where a female Parsi dies leaving a widower and children, the property of which she shall have died intestate shall be divided among the widower and such children, so that his share shall be double the share of each of the children.

**3.** When a Parsi dies leaving children, but no widow, the property of which he shall have died intestate shall be divided amongst the children, so that the share of each son shall be four times the share of each daughter.

**4.** When a female Parsi dies leaving children, but no widow, the property of which she shall have died intestate shall be divided amongst the children in equal shares.

**5.** If any child of a Parsi intestate shall have died in his or her lifetime, the widow or widower and issue of such child shall take the share which such child would have taken if living at the intestate's death in such manner as if such deceased child had died immediately after the intestate's death.

**6.** Where a Parsi dies leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother, if both are living, or one of them if the other is dead, shall take one moiety of the property as to which he or she shall have died intestate, and the widow or widower shall take the other moiety.

Where both the father and the mother of the intestate survive him or her, the father's share shall be double the share of the mother.

Where neither the father nor the mother of the intestate survives him or her, the intestate's relatives on the father's side, in

the order specified in the first schedule hereto annexed, shall take the moiety which the father and the mother would have taken if they had survived the intestate.

The next-of-kin standing first in the same schedule shall be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same degree of propinquity.

If there be no relatives on the father's side, the intestate's widow or widower shall take the whole.

**7.** When a Parsi dies leaving neither lineal descendants nor a widow or widower, his or her next-of-kin, in the order set forth in the second schedule hereto annexed, shall be entitled to succeed to the whole of the property as to which he or she shall have died intestate.

The next-of-kin standing first in the same schedule shall always be preferred to those standing second, the second to the third, and so on in succession: Provided that the property shall be so distributed as that each male shall take double the share of each female standing in the same decree of propinquity.

**8.** The following portions of the Indian Succession Act, 1865, shall not apply to Parsis (that is to say), the whole of Part III., the whole of Part IV., excepting section 25, the whole of Part V., and section 43.

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## THE FIRST SCHEDULE.

- (1) Brothers and sisters, and the children or lineal descendants of such of them as shall have predeceased the intestate.
- (2) Grandfather and grandmother.
- (3) Grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.
- (4) Great-grandfather and great-grandmother.
- (5) Great-grandfather's sons and daughters, and the lineal descendants of such of them as shall have predeceased the intestate.

## THE SECOND SCHEDULE.

- (1) Father and mother.
  - (2) Brothers and sisters, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (3) Paternal grandfather and paternal grandmother.
  - (4) Children of the paternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (5) Paternal grandfather's father and mother.
  - (6) Paternal grandfather's father's children, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (7) Brothers and sisters by the mother's side, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (8) Maternal grandfather and maternal grandmother.
  - (9) Children of the maternal grandfather, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (10) Son's widow, if she have not remarried at or before the death of the intestate.
  - (11) Brother's widow, if she have not remarried at or before the death of the intestate.
  - (12) Paternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
  - (13) Maternal grandfather's son's widow, if she have not remarried at or before the death of the intestate.
  - (14) Widowers of the intestate's deceased daughters, if they have not remarried at or before the death of the intestate.
  - (15) Maternal grandfather's father and mother.
  - (16) Children of the maternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
  - (17) Paternal grandfather's father and mother.
  - (18) Children of the paternal grandfather's father, and the lineal descendants of such of them as shall have predeceased the intestate.
-

# ACT XV. OF 1865.\*

## The Parsi Marriage and Divorce Act, 1865.

RECEIVED THE G. G.'S ASSENT ON THE 7TH APRIL 1865.

*An Act to define and amend the Law relating to Marriage and Divorce among the Parsis.*

WHEREAS the Parsi community has represented the necessity of defining and amending the law relating to marriage and divorce among

Preamble.

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\* For the Statement of Objects and Reasons of the Bill which was passed into law as Act XV. of 1865, see Gazette of India, 1865, p. 99; for discussions on the Bill, see *ibid*, Supplement, pp. 44, 110 and 113.

Act XV. of 1865 has been declared to be in force in the whole of British India, except the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

Sindh—See Gazette of India, Dec. 4, 1880, Pt. I, p. 672.

West Jalpaiguri.—See Gazette of India, Mar. 5, 1881, Pt. I, p. 74.

The Districts of Hazaribagh, Lohardaga, and Maubhum, and Pargana Dhalbhum, and the Kalhan in the District of Singhbhum—See Gazette of India, Oct. 22, 1881, Pt. I, p. 504.

The scheduled portion of the Mirzapur District.—See Gazette of India, May 31, 1879, Pt. I, p. 383.

Jaunsar Bawar.—See Gazette of India, May 31st 1879, Pt. I, p. 382.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan—See Gazette of India, Jan. 30, 1886, Pt. I, p. 48.

The District of Sylhet.—See Gazette of India, Oct. 4, 1879 Pt. I, p. 631.

The rest of Assam (except the North Lushai Hills).—See Gazette of India, 1897, Pt. I, p. 299.

It has been extended, under the same Act, to the following Scheduled Districts:—

Kumaon and Garhwal.—See Gazette of India, Dec., 4, 1876, Pt. I, p. 606.

The North-Western Provinces Tarai.—See Gazette of India, Sep. 23, 1876 Pt., I, p., 505.

British Baluchistan.—See Gazette of India, 1898, Pt. II., p. 327.

It has been declared, under the same Act, not to be in force in the Scheduled District of Lahaul.—See Gazette of India, May 1, 1886, Pt. I, p. 301.

Parsi; And whereas it is expedient that such law should be made conformable to the customs of the said community; It is enacted as follows:—

### *I.—Preliminary.*

Short title. **1** This Act may be cited as "The Parsi Marriage and Divorce Act, 1865."

Interpretation clause. **2** In this Act, unless there be something repugnant in the subject or context,—

Words in the singular number include the plural, and words in the plural number include the singular;

"Priest" "priest" means a Parsi priest, and includes Dastur and Mobed:

"marriage" means a marriage between Parsis, whether contracted before or after the commencement of this Act and "husband" and "wife" respectively mean a Parsi husband and a Parsi wife:

"Section." "section" means a section of this Act:

"Chief Justice." "Chief Justice" includes Senior Judge:

"Court." "Court" means a Court constituted under this Act:

"British India" means the territories which are or shall be vested in Her Majesty or Her successors by the Statute 21 and 22 Vict., cap. 106, entitled "An Act for the better government of India;"

And in any part of British India in which this Act operates, "Local Government" means the person authorized to administer executive government in such part of India, or the chief executive officer of such part when it is under the immediate administration of the Governor-General of India in Council, and when such officer shall be authorized to exercise the powers vested by this Act in a Local Government; and



“High Court” means the highest Civil Court of appeal in such part.

## II.—Of Marriages between Parsis.

3. No marriage contracted after the commencement of

Requisites to validity of this Act shall be valid, if the contracting parties are related to each other in any of the degrees of consanguinity or affinity prohibited among Parsis, and set forth in a table which the Governor-General of India in Council shall, after due enquiry, publish in the Gazette of India,\* and unless such marriage shall be solemnized according to the Parsi form or ceremony called “Asirvad” by a Parsi priest in the presence of two Parsi witnesses independently of such officiating priest; and unless, in the case of any Parsi who shall not have completed the age of twenty-one years, the con-

\* The following Table was published in the Gazette of India, Sep. 9, 1865, pp. 981, 982 :—

TABLE.

*A man shall not marry his—*

- |                                                                                                                  |                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| 1. Paternal grandfather's mother.                                                                                | 17. Wife of son or of step-son, or of any direct lineal descendant of a son or step-son.                                  |
| 2. Paternal grandmother's mother.                                                                                | 18. Wife of daughter's son, or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter. |
| 3. Maternal grandfather's mother.                                                                                | 19. Mother of daughter's husband.                                                                                         |
| 4. Maternal grandmother's mother.                                                                                | 20. Mother of son's wife.                                                                                                 |
| 5. Paternal grandmother.                                                                                         | 21. Mother of wife's paternal grandfather.                                                                                |
| 6. Paternal grandfather's wife.                                                                                  | 22. Mother of wife's paternal grandmother.                                                                                |
| 7. Maternal grandmother.                                                                                         | 23. Mother of wife's maternal grandfather.                                                                                |
| 8. Maternal grandfather's wife.                                                                                  | 24. Mother of wife's maternal grandmother.                                                                                |
| 9. Mother or step-mother.                                                                                        | 25. Wife's paternal grand-mother.                                                                                         |
| 10. Father's sister or step-sister.                                                                              | 26. Wife's maternal grand-mother.                                                                                         |
| 11. Mother's sister or step-sister.                                                                              | 27. Wife's mother or stepmother.                                                                                          |
| 12. Sister or step-sister.                                                                                       | 28. Wife's father's sister.                                                                                               |
| 13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother. | 29. Wife's mother's sister.                                                                                               |
| 14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.     | 30. Father's brother's wife.                                                                                              |
| 15. Daughter or step-daughter, or any direct lineal descendant of either.                                        | 31. Mother's brother's wife.                                                                                              |
| 16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.                 | 32. Brother's son's wife.                                                                                                 |
|                                                                                                                  | 33. Sister's son's wife.                                                                                                  |

sent of his or her father or guardian shall have been previously given to such marriage.

### TABLE.

*A woman shall not marry her—*

- |                                                                                                                 |                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| 1. Paternal grandfather's father.                                                                               | 18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son. |
| 2. Paternal grandmother's father.                                                                               | 19. Father of daughter's husband.                                                                                 |
| 3. Maternal grandfather's father.                                                                               | 20. Father of son's wife.                                                                                         |
| 4. Maternal grandmother's father.                                                                               | 21. Father of husband's paternal grandfather.                                                                     |
| 5. Paternal grandfather.                                                                                        | 22. Father of husband's paternal grandmother.                                                                     |
| 6. Paternal grandmother's husband.                                                                              | 23. Father of husband's maternal grandfather.                                                                     |
| 7. Maternal grandfather.                                                                                        | 24. Father of husband's maternal grandmother.                                                                     |
| 8. Maternal grandmother's husband.                                                                              | 25. Husband's paternal grandfather.                                                                               |
| 9. Father for step-father.                                                                                      | 26. Husband's maternal grandfather.                                                                               |
| 10. Father's brother or step-brother.                                                                           | 27. Husband's father or stepfather.                                                                               |
| 11. Mother's brother or step-brother.                                                                           | 28. Brother of husband's father.                                                                                  |
| 12. Brother or step-brother.                                                                                    | 29. Brother of husband's mother.                                                                                  |
| 13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother.          | 30. Husband's brother's son, or his direct lineal descendant.                                                     |
| 14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.              | 31. Husband's sister's son, or his direct lineal descendant.                                                      |
| 15. Son or step-son, or any direct lineal descendant of either.                                                 | 32. Brother's daughter's husband.                                                                                 |
| 16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.      | 33. Sister's daughter's husband.                                                                                  |
| 17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter. |                                                                                                                   |

*Note.*—In the above table the words "Brother" and "Sister" denote brother and sister of the whole as well as half blood. Relationship by step

4. No Parsi shall, after the commencement of this Act, Re-marriage, save after contract any marriage in the lifetime of divorce, unlawful during life- his or her wife or husband, except after time of first wife or husband. his or her lawful divorce from such wife or husband by sentence of a Court as hereinafter provided :

and every marriage contracted contrary to the provisions of this section shall be void.

5. Every Parsi who shall, after the commencement of this Act, and during the lifetime of his or her wife Punishment of bigamy. or husband, contract any marriage without having been lawfully divorced from such wife or husband, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code\* for the offence of marrying again during the lifetime of a husband or wife.

6. Every marriage contracted after the commencement of this Certificate and registry of Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in the schedule to this Act.

The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate, together with a fee of two rupees to be paid by the husband, to the registrar of the place at which such marriage is solemnized.

The registrar, on receipt of the certificate and fee, shall enter the certificate in a register to be kept by him for that purpose, and shall be entitled to retain the fee.

7. For the purposes of this Act a Appointment of registrar. registrar shall be appointed. . . †

Within the local limits of the ordinary original civil jurisdiction of a High Court, the registrar shall be appointed by the Chief Justice of such Court; and, without such limits, by the Local Government.

\* Act XLV. of 1860.

† In s. 7, the words, "who may be the Registrar appointed under Act XVI. of 1864 (to provide for the registration of assurances)," repealed by Act XIV. of 1870, have here been omitted.

Every registrar so appointed may be removed by the Chief Justice or Local Government\* appointing him.

8. The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection; and certified extracts therefrom shall, on application, be given by the registrar on payment to him by the applicant of two rupees for each such extract.

Every such registrar shall be evidence of the truth of the statements therein contained.

8A† Every registrar, except the registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the Governor-General in Council from time to time directs, send to the Registrar-General of Births, Deaths, and Marriages for the territories administered by the Local Government by which he was appointed, a true copy, certified by him in such form as the Governor-General from time to time prescribes, of all certificates entered by him in the said register of marriages since the last of such intervals.

9. Any priest knowingly and wilfully solemnizing any marriage contrary to, and in violation of, section 4, shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

10. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

\* Registrars of Assurances in certain towns in the Central Provinces have been appointed Registrars of Parsi Marriages, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 14.

For Registrars of Parsi Marriages appointed in Burma, see the Burma Rules Manual Ed. 1897, p. 24.

† S. 8A has been inserted by the Births, Deaths, and Marriages Registration Act (VI. of 1886), s. 31.

**11.** Every other person required by section 6 to subscribe or attest the said certificate, who shall willfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

**12.** Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, or does not know to be true, shall be deemed to be guilty of the offence of forgery as defined in the Indian Penal Code,\* and shall be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.\*

**13.** Any registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**14.** Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code\* for a term which may extend to two years, or, if he be a registrar, for a term which may extend to five years, and shall also be liable to fine which may extend to five hundred rupees.

### *III.—Of Parsi Matrimonial Courts.*

**15.** For the purposes of hearing suits under this Act, a special Court† shall be constituted in each of the presidency towns of Calcutta, Madras, and Bombay, and in such other places in the territories of the several Local Governments as such Governments respectively shall think fit.

**16.** The Court so constituted in each of the presidency towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras, or Bombay, as the case may be.

\* Act XLV. of 1860.

† For notification constituting the Parsi Chief Matrimonial Court of Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, p. 27.

The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court.

The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint, shall be the Judge of such Matrimonial Court; and, in the trial of cases under this Act, he shall be aided by eleven delegates.

17. Every Court so constituted at a place other than a presidency-town shall be entitled the Parsi District Matrimonial Court of such place.\*

Subject to the provisions contained in the next following section, the local limits of the jurisdiction of such Court shall be coterminous with the limits of the district in which it is held.

The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court; and, in the trial of cases under this Act, he shall be aided by seven delegates.

18. The Local Government may from time to time alter the Power to alter territorial local limits of the jurisdiction of any jurisdiction of District Courts. Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.†

19. Any district, which the Local Government, on account of Certain districts within the fewness of the Parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such Local Government where there is such Court.‡

\* For notification constituting District Courts in Surat, Puna and in Sind. see *ibid*.

† For notification fixing the local limits of the jurisdiction of the Courts constituted at Puna and at Surat under s. 17, see Bombay List of Local Rules and Orders, Ed. 1896, p. 27.

‡ Under this power the settlement of Aden and its dependencies have been included within the jurisdiction of the Parsi Chief Matrimonial Court of Bombay, see *ibid*, pp. 27 and 28.

**20.** A seal shall be made for every Court constituted under this Act, and all decrees and orders, and copies of decrees and orders of such Court, shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

**21.** The Local Governments shall, in the presidency-towns and districts subject to their respective governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act.

The persons so appointed shall be Parsis: their names shall be published in the official Gazette; and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and, in districts beyond such limits, not more than twenty.

**22.** The appointment of a delegate shall be for life.

But, whenever a delegate shall die, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or be convicted of an offence under the Indian Penal Code\* or other law for the time being in force, then and so often the Local Government may appoint any other person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the official Gazette.

**23.** All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code.\*

**24.** The delegates selected under sections 16 and 17 to aid in the adjudication of suits under this Act shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the Local Government under section 21.

**25.** All advocates, vakils, and attorneys-at-law entitled to practise in a High Court shall be entitled to practise in any of the Court constituted under this Act; and all vakils entitled to practise in a District

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\* Act XLV. of 1860.

Court shall be entitled to practise in any District Matrimonial Court constituted under this Act.

26. All suits instituted under this Act shall be brought in the Court in which suits to be brought. Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

When the defendant shall, at such time, have left British India, such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

#### *IV.—Of Matrimonial Suits—*

##### *(a.) For a Decree of Nullity.*

27. If a Parsi, at the time of his or her marriage, was a lunatic or of habitually unsound mind, such marriage may, at the instance of his or her wife or husband, be declared null and void upon proof that the lunacy or habitual unsoundness of mind existed at the time of the marriage, and still continues :

Provided that no suit shall be brought under this section if the plaintiff shall, at the time of the marriage, have known that the respondent was a lunatic or of habitually unsound mind.

28. In any case in which consummation of the marriage is from natural causes, impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

##### *(b.) For a Decree of Dissolution in Case of Absence.*

29. If a husband or wife shall have been continually absent from his or her wife or husband for a space of seven years, and shall not have been heard of as being alive within that time by those persons who would naturally have heard of him or her had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

##### *(c.) For Divorce or Judicial Separation.*

30. Any husband may sue that his marriage may be dissolved on ground of wife's adultery, and a divorce granted, on the ground that his wife has, since the celebration thereof, been guilty of adultery ;



and any wife may sue that her marriage may be dissolved, and

On ground of husband's adultery, &c. a divorce granted, on the ground that, since the celebration thereof, her husband has been guilty of adultery with a married, or fornication with an unmarried, woman not being a prostitute, or of bigamy coupled with adultery, or of adultery coupled with cruelty, or of adultery coupled with wilful desertion for two years or upwards, or of rape, or of an unnatural offence :

In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and, in any such suit by the husband, the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

31. If a husband treat his wife with such cruelty or personal violence as to render it, in the judgment of the Court, improper to compel her to live with him, or if his conduct afford her reasonable grounds for apprehending danger to life or serious personal injury, or if a prostitute be openly brought into, or allowed to remain in, the place of abode of a wife by her own husband, she shall be entitled to demand a judicial separation.

32. In a suit for divorce or judicial separation under this Act, if the Court be satisfied of the truth of the allegations contained in the plaint, and

that the offence therein set forth has not been condoned, and that the husband and wife are not colluding together, and that the plaintiff has not connived at, or been accessory to, the said offence, and

that there has been no unnecessary or improper delay in instituting the suit, and

that there is no other legal ground why relief should not be granted,

then, and in such case, but not otherwise, the Court shall decree a divorce or judicial separation accordingly.

33. In any suit under this Act for divorce or judicial separation, if the wife shall not have an independent income sufficient for her support

*Alimony pendente lite.*

and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her, monthly or weekly during the suit, such sum, not exceeding one-fifth of the husband's net income, as the Court, considering the circumstances of the parties, shall think reasonable.

34. The Court may, if it shall think fit, on any decree for divorce or judicial separation, order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum, or such monthly or periodical payments of money, for a term not exceeding her life, as, having regard to her own property (if any), her husband's ability, and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties, and suspend the pronouncing of its decree until such instrument shall have been duly executed.

In case any such order shall not be obeyed by her husband, he shall be liable to damages at her suit, and further to be sued by any person supplying her with necessaries during the time of such disobedience, for the price or value of such necessaries.

35. In all cases in which the Court shall make any decree or order for alimony, it may direct the Payment of alimony to wife or her trustee. same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court may seem expedient, and may, from time to time, appoint a new trustee, if, for any reason, it shall appear to the Court expedient so to do.

*(d.) For Restitution of Conjugal Rights.*

36. Where a husband shall have deserted, or, without lawful cause, ceased to cohabit with, his wife, or where a wife shall have deserted, or, without lawful cause, ceased to cohabit with, her husband, the party so deserted, or with whom cohabitation shall have so ceased, may sue for the restitution of his or her conjugal rights, and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

If such decree shall not be obeyed by the party against whom it is passed, he or she shall be liable to be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.\*

\* See 9 Bom. 290.

**37.** Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage between Parsis, or any contract connected with, or arising out of, any such marriage, if, at the date of the institution of the suit, the husband shall not have completed the age of sixteen years, or the wife shall not have completed the age of fourteen years.

No suit to enforce marriage or contract arising out of marriage when husband under 16, or wife under 14, years.

**38.** In every suit preferred under this Act, the case shall be tried with closed doors should such be the wish of either of the parties.

Suits with closed doors.

**39.** [*Stamps on complaints and petitions.*] *Repealed by the Court Fees Act (VII. of 1870).*

**40.** The provisions of the Code of Civil Procedure\* shall, so far as the same may be applicable, apply to suits instituted under this Act.

Civil Procedure Code applied.

**41.** In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried.

Determination of questions of law, procedure, and fact.

**42.** An appeal shall lie to the High Court from the decision of any Court established under this Act, whether a Chief Matrimonial Court or a District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground:

Appeal to High Court.

Provided that such appeal be instituted within three calendar months after the decision appealed from shall have been pronounced.

**43.** When the time hereby limited for appealing against any decree dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or

Liberties to parties to marry again.

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\* See Act XIV. of 1882, s. 3.

when any such appeal shall have been dismissed, or

when, in the result of any appeal, any marriage shall be declared to be dissolved, but not sooner,

it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been dissolved by death.

#### *V.—Of the Children of the Parties.*

44. In any suit under this Act for obtaining a judicial separation or a decree of nullity of marriage,

Custody of children *pendente lite*. or for dissolving a marriage, the Court may from time to time pass such interim orders, and make such provision in the final decree, as it may deem just and proper, with respect to the custody, maintenance, and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such suit,

and may, after the final decree, upon application by petition

Orders as to custody of children after final decree. for this purpose, make from time to time all such orders and provisions with respect to the custody, maintenance, and education of such children as might have been made by such final decree, or by interim orders, in case the suit for obtaining such decree were still pending.

45. In any case in which the Court shall pronounce a decree

Settlement of wife's property for benefit of children. of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property, either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of such property or any part thereof for the benefit of the children of the marriage or any of them.

#### *VI.—Of the Mode of enforcing Penalties under this Act.*

46. All offences under this Act may be tried by any officer

Cognizance of offences under Act. exercising the powers of a Magistrate, unless the period of imprisonment to which the offender is liable shall exceed that which such officer is competent to award under the law for the time being in force in the place in which he is employed.

When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

47. If any offence, which by this Act is declared to be punishable with fine, or with fine and imprisonment not exceeding six months, shall be committed by any person within the local limits of the ordinary original civil jurisdiction of the High Court, such offence shall be punishable upon summary conviction by any Presidency Magistrate\* of the place at which such Court is held.

48. All fines imposed under the authority of this Act may, in case of non-payment thereof, be levied by distress and sale of the offender's moveable property by warrant under the hand of the officer imposing the fine.

49. In case any such fine shall not be forthwith paid, such officer may order the offender to be arrested and kept in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

50. If, upon the return of the warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or

in case it shall appear to the satisfaction of such officer, by the confession of the offender or otherwise, that he has not sufficient moveable property whereupon such fine could be levied if a warrant of distress were issued,

any such officer may, by warrant under his hand, commit the offender to prison for any term not exceeding two calendar months when the amount of fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount of fine.

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\* See Act V. of 1898, s. 3 (2), according to which the expression "Presidency Magistrate" has been substituted for the words "Magistrate of Police" as originally enacted.



# ACT IV. OF 1893:\*

## The Partition Act, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received His Excellency's Assent on the 9th March 1893.)

### *An Act to amend the Law relating to Partition.*

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

Title, extent, commencement, and saving. 1. (1) This Act may be called the Partition Act, 1893;

(2) It extends to the whole of British India; and

(3) It shall come into force at once:

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

2. Whenever, in any suit for partition, in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the share-

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1892, Pt. V., p. 46; for Report of the Select Committee, see *ibid*, 1893, Pt. V., p. 51; for Proceedings in Council, see *ibid*, 1893, Pt. VI., pp. 38 and 49.

Act IV. of 1893 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See. Sch. I. and s. 4.

holders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property, and a distribution of the proceeds.

3. (1) If, in any case in which the Court is requested under

Procedure when sharer undertakes to buy. the last-foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for sale, the Court shall order a valuation of the share or shares in such manner as it may think fit, and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of, or incident to, the application or applications.

4. (1) Where a share of a dwelling-house belonging to an

Partition-suit by transferee undivided family has been transferred to of share in dwelling-house. a person who is not a member of such family, and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it hinks fit, and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If, in any case described in sub-section (1), two or more members of the family, being such shareholders, severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last-foregoing section.

5. In any suit for partition, a request for sale may be made, or

Representation of parties an undertaking or application for leave under disability. to buy may be given or made, on behalf of any party under disability, by any person authorized to act on behalf of such party in such suit; but the Court shall not be bound to comply with any such request, undertaking, or application un-



less it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding and the amount of such bidding by shareholders. Reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit, and may be varied from time to time.

(2) On any such sale, any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit, or as to setting off, or accounting for, the purchase-money or any part thereof, instead of paying the same, as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively, advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely—

(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras, or Bombay in the exercise of its original jurisdiction, or of the Court of the Recorder of Rangoon, the procedure of such Court in its original civil jurisdiction for the sale of property by the Registrar ;

(b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may, from time to time, by rules prescribe in this behalf ; and, until such rules are made, the procedure prescribed in the Code of Civil Procedure\* in respect of sales in execution of decrees.

8. Any order for sale made by the Court under section 2, 3, or 4 shall be deemed to be within the meaning of section Code of Civil Procedure.\*

## PARTITION ACT.

[Act IV. of 1893.]

9. In any suit for partition, the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates, and a sale of the remainder under this Act.

Saving of power to order partly partition and partly sale.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

Application of Act to pending suits.

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\* Act V. of 1908.

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## The Powers-of-Attorney Act, 1882.

*An Act to amend the Law relating to Powers-of-Attorney.*

Preamble. For the purpose of amending the law relating to Powers-of-Attorney; It is hereby enacted as follows:—

**Short title.**                      1. This Act may be called "The Powers-of-Attorney Act, 1882 ;"

Local extent. It applies to the whole of British India;

Commencement. and it shall come into force on the first day of May 1882.

**2.** The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

**3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before**

\* For Statement of Objects and Reasons, see *Gazette of India*, 1881, Pt. V., p. 1473; for Proceedings in Council, see *ibid*, 1881, Supplement, p. 1409; and *ibid*, 1882, Supplement, p. 204.

Act VII. of 1882 has been declared in force in the Santhal Parganas by s. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1886).

the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency, or revocation, was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person may search that file and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument, and of the deposit thereof in the High Court.

(e) \* The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (a), (b), and (c).

(f) *[Repealed by Act VI. of 1900.]*

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

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\* For instance of rules made and fees prescribed under this clause, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 165.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument, or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. [*Act XXVIII. of 1886, s. 39, repealed.*] Repealed by the Repealing and Amending Act (XII. of 1891).

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## SECTIONS.

24. No written statement except in cases of set-off.
25. Return of documents admitted in evidence.
26. Compensation payable by plaintiff to defendant in certain cases.
27. Decree-holder to accompany officer executing warrant.
28. Things attached to immovable property and removeable by tenant to be deemed moveable in execution.
29. Discharge of judgment-debtor on sufficient security.
30. Court may, in certain cases, suspend execution of decree.
31. Execution of decree of Small Cause Court by other Courts. Procedure when decree transferred.
32. Minors may sue in certain cases as if of full age.
33. Power to delegate non-judicial duties.
34. Registrar to hear and determine suits like a Judge Proviso.
35. Registrar may execute all decrees with the same powers as a Judge.
36. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

## CHAPTER VI.

## NEW TRIALS AND APPEALS.

37. General finality of decrees and orders of Small Cause Court.
38. New trial of contested cases.
39. Removal of certain causes into High Court.
40. Rules with respect to suits removed under the last foregoing section.

## SECTIONS.

## CHAPTER VII.

## RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY.

41. Summons against person occupying property without leave.
42. Service of summons.
43. Order for possession.
44. Such order to justify bailiff entering on property, and giving possession.  
Bar to proceedings against Judge or officer for issuing, etc., order or summons.
45. Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.  
Occupant may sue for compensation.
46. Liability of applicant obtaining order when not entitled.  
Application for order in such case an act of trespass.
47. Stay of proceedings on occupant giving security to bring suit against applicant.
48. Proceedings to be regulated by Code of Civil Procedure.
49. Recovery of possession no bar to suit to try title.

## CHAPTER VIII.

## DISTRESSES.

50. Local extent of chapter.  
Saving of certain rents.
51. Appointment of bailiffs and appraisers.
52. Security to be given by appointees.
53. Application for distress-warrant.
54. Issue of distress-warrant.
55. Time for distress.
56. What places bailiff may force open.
57. Property which may be seized.
58. Impounding distress.
59. Inventory.

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Notice of intended appraisal and sale.

Copies of inventory and notice to be filed.

60. Application to discharge or suspend warrant.

61. Claim to goods distrained made by a stranger.

62. Power to award compensation to debtor or claimant.

63. Power to transfer to High Court cases involving more than one thousand rupees.

64. Appraisement.

Notice of sale.

65. Sale.

Application of proceeds.

66. Costs of distresses.

67. Account of costs and proceeds.

68. Bar of distresses except under this chapter.

Penalty for making illegal distresses.

## CHAPTER IX.

## REFERENCES TO HIGH COURT.

59. Reference when compulsory.

70. Security to be furnished on such reference by party against whom contingent judgment given.

If no such security given, party to be deemed to have submitted to judgment.

## CHAPTER X.

## FEES AND COSTS.

71. Institution-fee.

72. Fees for processes.

73. Repayment of half fees on settlement before hearing.

74. Fees and costs of poor persons.

75. Power to vary fees.

76. Expense of employing legal practitioners.

## SECTIONS.

77. Sections 3, 5, and 25 of Court Fees Act, 1870, saved.

## CHAPTER XI.

## MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. Power to fine officers.

79. Default of bailiff or other officer in execution of order or warrant.

80. Extortion or default of officers.

81. Court empowered to summon witnesses, etc.

82. Enforcement of order.

## CHAPTER XII.

## CONTEMPT OF COURT.

83. Procedure of Court in certain cases of contempt.

84. Record in such cases.

85. Procedure where Court considers that case should not be dealt with under section 83.

86. Discharge of offender on submission or apology.

87. Imprisonment or committal of person refusing to answer or produce document.

88. Appeal from orders under sections 83 and 87.

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## MISCELLANEOUS.

89. Persons by whom process may be served.

90. Registers and returns.

91. Court to furnish records, etc., called for by local Government or High Court.

92. Holidays and vacations.

93. Certain persons exempt from arrest by Court.

94. No suit to lie upon decree of Court.

95. Place of imprisonment.

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96. Tender in suit for anything  
done under Act.  
97. Limitation of prosecutions.

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FIRST SCHEDULE:

ENACTMENTS REPEALED.

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SECOND SCHEDULE:

PORTIONS OF CIVIL PROCEDURE CODE  
EXTENDING TO COURT.

*[Repealed by Act I. 1895, s. 12.]*

## SECTIONS.

## THIRD SCHEDULE:

FORMS OF AFFIDAVIT, WARRANT,  
INVENTORY, ETC.

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FOURTH SCHEDULE:

FEEs FOR SUMMONSES AND OTHER  
PROCESSES.



## ACT XV. OF 1882:

### The Presidency Small Cause Courts Act, 1882.\*

RECEIVED THE G.-G.'S ASSENT ON THE 17TH MARCH 1882.

*An Act to consolidate and amend the Law relating to the Courts of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras, and Bombay; It is hereby enacted as follows:—

#### CHAPTER I.

##### PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882:"	and it shall come
Short title.	into force on the first day of July
Commencement.	1882.

But nothing herein contained shall affect the provisions of the Army Act,† section 151, or the rights or liabilities of any person under‡ any decree passed before that day.

2. On and from the said day, the enactments specified in the	First Schedule hereto annexed shall be
Repeal of enactments.	repealed to the extent mentioned therein.

But all Courts constituted, appointments made, and securities given, under any of the said enactments, shall, so far as may be, be deemed to have been respectively constituted, made, and given under this Act.

\* For Statement of Objects and Reasons, see *Gazette of India*, 1880, Pt. V., p. 376; for first Report of the Select Committee, see *ibid* 1881, Pt. V., p. 381; for further Report of the Select Committee, see *ibid* 1882, Pt. V., p. 3; for Proceedings in Council see *ibid*, Supplement, 1880, pp. 1394 and 1433; *ibid*, 1882, Supplement, p. 204; and *ibid*, 1882, Extra Supplement, p. 43.

† Stat. 44 & 45 Vict., c. 58.

‡ In s. 1 (second paragraph), the figures "1881," being repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

All references to any enactment hereby repealed, made in References in previous Acts passed prior to the said day, shall, be read, so far as may be practicable, as if made to this Act or the corresponding provisions thereof.

3. In Act No. XXIII. of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures, "Act VII., 1847," the words and figures, "The Presidency Small Cause Courts Act, 1882, Chapter VIII.," shall be substituted; the words, "as provided by the said Act," shall be repealed; and, for each of the expressions, "a Commissioner of the Court for recovery of small debts referred to in the said Act" and "the said Commissioners," the words, "the Judges of the Court of Small Causes at Calcutta," shall be substituted.\*

4. In this Act, the "Small Cause Court" means the Court of "Small Cause Court" small causes constituted under this Act defined. in the town of Calcutta, Madras, or Bombay, as the case may be; and the expression "*Registrar*" includes a *Deputy Registrar*.†

## CHAPTER II.

### CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be, in each of the towns of Calcutta, Madras, Courts of Small Causes and Bombay, a Court, to be called the established. Court of Small Causes of Calcutta, Madras,‡ or Bombay, as the case may be.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the superintendence, etc., of High Court of Judicature at Fort High Court. William, Madras, or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the 28th day of December 1865, for such High Courts, and

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\* The last paragraph of s. 3 has been repealed by Act V. of 1908, Sch. V., and therefore omitted.

† In s. 4, the words italicized have been added by the Presidency Small Cause Courts Act (III. of 1899), s. 2.

‡ For Proclamation declaring the constitution of the Madras Court of small Causes, see Madras List of Local Rules and Orders, Ed. 1898, p. 204.

within the meaning of the Code of Civil Procedure;\* “and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879;†” ‡and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the 24th and 25th of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

7. Subject to the control of the Governor-General in Council, Appointment, suspension, the Local Government may, from time and removal of Judges. to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court :

§ Provided that no person shall be appointed to be a Judge, of such Court, or be authorized to exercise the powers of a Judge, of such Court, unless he is—

(a) an advocate of a High Court of Judicature established under the Indian High Courts Act, 1861,|| or

(b) a vakil or attorney of any such High Court, or

(c) a Judge of a Court of Civil Judicature of not less than five years' standing ;

and that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

The Local Government may, by a like notification, suspend, and, with the previous sanction of the Governor-General in Council remove any Judge so appointed.¶

Rank and precedence of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

\* Act XIV. of 1882.—See now the new Code (Act V. of 1903).

† Act XVIII. of 1879.

‡ In s. 6 the words quoted have been inserted by the Presidency Small Cause Courts Act (I. of 1895), s. 2.

§ This proviso has been substituted for the one originally enacted by the Presidency Small Cause Courts Act (I. of 1895), s. 3 (1).

|| Stat. 24 and 25 Vict., c. 104.

¶ The last paragraph of s. 7, as originally enacted, being repealed by the Presidency Small Cause Courts Act (I. of 1895), s. 3 (2), has been omitted.

8A.\* (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as absent Judge, the Local Government may appoint any person, having the qualifications required by section 7, to act as Chief Judge or Judge of the said Court, as the case may be.

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the Local Government sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.

Procedure and practice of Small Cause Court.

9.† (1) The High Court may, from time to time, by rules‡ having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession of, or in addition to, any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December 1894, in or under this Act or any other enactment for the time being in force, and

(aa)§ empower the Registrar to hear and dispose of unfounded suits and interlocutory applications or matters, and

(b) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise, by one or more of the Judges of the

\* S 8A has been substituted by s. 3 of the Presidency Small Cause Courts Act (III. of 1899) for s. 8A as inserted by s. 4 of the Presidency Small Cause Courts Act (I. of 1895).

† S 9 has been substituted by the Presidency Small Cause Courts Act (I. of 1895), s. 5 for the one originally enacted.

‡ For notifications prescribing such rules in—

Bombay—see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., pp. 410 and 422 ;

Madras.—see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 204.

§ Cl. (aa) has been added by the Presidency Small Cause Courts Act (III. of 1899), s. 4.

Small Cause Court, of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December 1894, shall be in force unless and until cancelled or varied by rules made by the High Court under this section.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and, if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being\* prescribed by the Local Government.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint a *Deputy Registrar* and† as many clerks, bailiffs, and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred

\* For notifications under this section in—

Bombay—see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., p. 422;

Madras—see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 204.

† In s. 13 the words italicized have been inserted by the Presidency Small Cause Courts Act (III. of 1899), s. 5.

and imposed on it by this Act or any other law for the time being in force.

The Registrar and other officers so appointed shall exercise Powers and duties of such such powers, and discharge such duties of a ministerial nature, as the Chief Judge may, from time to time, by rule direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government

**14.** The Local Government may invest the Registrar with Registrar may be invested the powers of a Judge under this Act with powers of a Judge in for the trial of suits in which the suits not exceeding twenty amount or value of the subject-matter rupees. does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

*Explanation.\**—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit.

**15.** No Judge or other officer appointed under this Act shall, Judge or other officer not during his continuance as such Judge to practise or trade. or officer, either by himself, or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil, or other legal practitioner, or be concerned, either on his account, or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting, or concerned, shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament, or Act of any British Indian Legislature.

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\* This explanation has been added by the Presidency Small Cause Courts Act (I. of 1895), s. 6.

## CHAPTER III.

## LAW ADMINISTERED BY THE COURT.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court, shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

## CHAPTER IV.

## JURISDICTION IN RESPECT OF SUITS.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Local limits of jurisdiction of Court.

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees; and

(a) the cause of action has arisen, either wholly or in part within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside or carry on business, or personally work for gain, within such local limits; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid, acquiesce in such institution:

Provided that, where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: Provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may, in its discretion, order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure,\* is disallowed, the Small Cause Court may, in its discretion, order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

\* Act XIV. of 1882.—See now the new Code (Act V. of 1908).



**28.** When the judgment-debtor under any decree of the Small

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

Cause Court is a tenant of immoveable property, anything attached to such property, and which he might, before the termination of his tenancy, lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, "and for the purpose of deciding all questions arising in the execution of such decree,"\* be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

**29.** Whenever any judgment-debtor, who has been arrested,

Discharge of judgment-debtor on sufficient security.

or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged, or the property to be released.

**30.** Whenever it appears to the Small Cause Court that any

Court may in certain cases suspend execution of decree.

judgment-debtor under its decree is unable, from sickness, poverty, or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time, and upon such terms as it thinks fit, suspend the execution of such decree, and discharge the debtor or make such order as it thinks fit.

**31.** If the judgment-debtor under any decree of the Small

Execution of decree of Small Cause Court by other Courts.

Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution,—

(a) in the case of execution against immoveable property situate within such local limits—"to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be;"†

\* The words quoted have been inserted by the Presidency Small Cause Courts Act (IV. of 1906), s. 2.

† In cl. (a) of s. 31, the words quoted have been substituted for the words, "to the High Court," by the Madras City Civil Courts Act (VII. of 1892), s. 12.

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure\* for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

**32.** Notwithstanding anything contained in the Code of Civil Procedure\* as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872,† for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

**33.** Any non-judicial or quasi-judicial act which the Code of Civil Procedure,‡ as applied by this Act, requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.§

**34.** The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

\* See Act XIV. of 1882, Ch. XIX.—But see now the new Code (Act V. of 1908), and its portion corresponding to Ch. XIX. of the Code of 1882.

† Act IX. of 1872.

‡ Act XIV. of 1882.—See now the new Code (Act V. of 1908).

§ For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts, which may be done by the Registrar of the Small Cause Court, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 204.

**35.** The Registrar may receive applications for the execution of decrees of any value passed by the Registrar may execute all decrees with the same powers as a Judge. Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

**36.** Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

## CHAPTER VI.\*

### NEW TRIALS AND APPEALS.

**37.** Save as otherwise provided by this chapter, or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive. General finality of decrees and orders of Small Cause Court.

**38.** Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the Code of Civil Procedure†), order a new trial to be held, or alter, set aside, or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings. New trial of contested cases.

*Explanation.*—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of, or in default of appearance by, the defendant.

**39. (1)** In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant, or within eight days after the service of the summons Removal of certain causes into High Court.

\* Ch. VI. has been substituted for the one originally enacted by the Presidency Small Cause Courts Act (I. of 1895), s. 13.

† Act XIV. of 1882.—See now the new Code (Act V. of 1908).

on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court.

\* “(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right

“Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order, for the payment of the amount claimed, and of the costs which may become payable by him to the plaintiff in respect of the said suit.”

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged, and the suit shall proceed in the Small Cause Court as if such order had never been made.

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

40. (1) When a suit has been removed into the High Court Rules with respect to suits under the last foregoing section, it shall be heard and disposed of by such Court removed under the last foregoing section, in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

(2) In every suit so removed as aforesaid, the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure† unless the Court shall otherwise order.

(3) In every suit so removed as aforesaid, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which.

\* In s. 39, sub-s. (2) and the *proviso* have been substituted for original sub-s. (2) by the Presidency Small Cause Courts Act (IV. of 1906), s. 3.

† Act XIV. of 1882.—See now the new Code (Act V. of 1908).

according to the practice of the High Court, are payable to the Government.

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

**41.** When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction, and occupying property without leave. of which the annual value at a rack-rent does not exceed "two"\* thousand rupees, as the tenant, or by permission of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under, or by assignment from him (hereinafter called the occupant), refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply† to the Small Cause Court for a summons against the occupant calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

**42.** The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure‡ for the service of a summons on a defendant.

**43.** If the occupant does not appear at the time appointed, and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

\* Substituted for "one" by Act IX. of 1912.

† For fee on such applications, see s. 71, *infra*.

‡ See Act XIV. of 1882, ss. 72 to 92.—But see now the new Code (Act V. of 1908), and the provisions thereof corresponding to those of ss. 78-92 of the Code of 1882.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

**44.** Any such order shall justify the bailiff to whom it is addressed in entering, after the hour of six in the morning, and before the hour of six in the afternoon, upon the property named therein, and such assistants as he thinks necessary, and giving possession of such property to the applicant; and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution, or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

**45.** When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect, or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect, or irregularity.

When no such damage is proved, the suit shall be dismissed; and when such damage is proved, but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

**46.** Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid, entitled to the possession of such property.

And when the applicant was not, at the time of applying for Application for order in any such order as aforesaid, entitled to such case an act of trespass. the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

**47.** Whenever, on an application being made under section Stay of proceedings on 41, the occupant binds himself with occupant giving security to two sureties, in a bond for such amount bring suit against applicant. as the Small Cause Court thinks reasonable having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute, without delay, a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suits is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

**48.** In all proceedings under this chapter, the Small Cause Court shall, as far as may be, and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.\*

**49.** Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

## CHAPTER VIII.

### DISTRESSES.

**50.** This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras, and Bombay.

\* Act XIV. of 1882.—See now the new Code (Act V. of 1908), superseding the Code of 1882.

Saving of certain rents.

But nothing contained in this chapter applies—

(a) to any rent due to Government ;

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

**51.** The Judges of the Small Cause Court may appoint four Appointment of bailiffs or more persons to be bailiffs and appraisers. and appraisers. praisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

**52.** The persons so appointed shall give security, to be Security to be given by approved by the said Judges, faithfully appointees. to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

**53.** Any person claiming to be entitled to arrears of rent Application for distress- of any house or premises to which this variant. chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the Form (marked A) in the Third Schedule hereto annexed.

**54.** The Judge or Registrar may thereupon issue a warrant Issue of distress-warrant. under his hand and seal, and returnable within six days, to the effect of the Form (marked B) contained in the same Schedule addressed to any one of such bailiffs.

The Judge or Registrar may, at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

**55.** Every distress under this chapter shall be made after Time for distress. sunrise and before sunset, and not at any other time.

**56.** The bailiff directed to make the distress may force open What places bailiff may any stable, out-house, or other building, and may also enter any dwelling-house force open.



the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the zanana or residence of women, which, by the usage of the country, is considered private.

**57.** In pursuance of the warrant aforesaid, the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant, and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

(a) things in actual use ; or

(b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or

(c) the debtor's necessary wearing apparel ; or

(d) goods in the custody of the law.

**58.** The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress.

**59.** On seizing any property under section 57, the bailiff shall make an inventory of such property, and shall give a notice in writing, to the effect of the Form (marked C) in the Third Schedule hereto annexed, to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.

Notice of intended appraisal and sale.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Copies of inventory and notice to be filed.

**60.** The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly-constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained ar-

Application to discharge or suspend warrant.

ticle, and such Judge may discharge or suspend such warrant, or release such article accordingly, upon such terms as he thinks just;

and any of the Judges of the said Court may, in his discretion, give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it, and attending the issue and execution of the warrant, shall be in the discretion of the Judge, and shall be paid as he directs.

**61.** If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons, calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons, and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

**62.** In any case under section 60 or section 61, the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may, for that purpose, make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

**63.** In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

**64.** In default of any order to the contrary by a Judge of a Small Cause Court, or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the Form (marked D) in the Third Schedule hereto annexed.

Appraisalment.  
Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

**65.** In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress, and then in

Sale.

Application of proceeds.

satisfaction of the debt; and the surplus (if any) shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

**66.** No costs of any distress under this chapter shall be taken or demanded except those mentioned in the Part (marked E) of the Third Schedule hereto annexed.

Costs of distresses.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

**67.** The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

Account of costs and proceeds.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

**68.** No distress shall be levied for arrears of rent except under the provisions of this chapter.

Bar of distress except under this chapter.

And any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees, and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

Penalty for making illegal distresses.

## CHAPTER IX.

## REFERENCES TO HIGH COURT.

**69.\* (1)** If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII. of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if, in any suit or any such proceeding in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion, or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the Code of Civil Procedure† shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617 of the said Code.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.

**70.** When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court for the costs of the reference to the High Court, and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

\* S. 69 has been substituted for the original section by the Presidency Small Cause Courts Act (IV. of 1906), s. 4.

† These references to Act XIV. of 1882 shall now be taken to be made to Act V. of 1908.—See section 158 of Act V. of 1908.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

## CHAPTER X.

### FEES AND COSTS.

#### Institution-fee.

#### 71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit and every application under\* section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

#### 72. The fees specified in the third and fourth columns of the

#### Fees for processes.

Fourth Schedule hereto annexed shall be

paid previous to the issue, in any suit or in any proceeding under Chapter VII. of this Act, of the processes to which the said columns respectively relate, by the persons on whose behalf such processes are issued when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column, of the said schedule.

#### 73. Whenever any such suit or proceeding is settled by agree-

Repayment of half fees on settlement before hearing. ment of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

\* In s. 71, the words and figures, "section 38 or," repealed by Act VII. of 1896 (an Act to amend Act XV. of 1882), s. 1, have here been omitted.

**74.** The Small Cause Court may, whenever it thinks fit, receive Fees and costs of poor and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment, or on a part-payment, of the fees mentioned in sections 71 and 72.

**75.** The Local Government may, for time to time, by notification\* in the official Gazette, vary the amount of the fees payable under sections 71 and 72 :  
Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

**76.** The expense of employing an advocate, vakil, attornery, or other legal practitioner, incurred by any party, shall not be allowed as costs in any suit, or in any proceeding under Chapter VII. of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

**77.** Nothing contained in this chapter shall affect the provisions of sections 3, 5, and 25 of the Court Fees Act, 1870,† saved. Court Fees Act, 1870.†

## CHAPTER XI.

### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

**78.** The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff, or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office; and such fine may be deducted from his salary.  
Power to fine officers.

\* For instances of such notifications in—  
Bombay—see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 422 and 423 ;

Madras—see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 204 and 205.

† Act VII. of 1870.

**79.** If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court, who is employed as such in the execution of any order or warrant, loses, by neglect, connivance, or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance, or omission, to pay such sum not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

**80.** If any clerk, bailiff, or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

**81.** For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses, and compelling the production of documents, which it possesses in suits under this Act.

**82.** Any order under this chapter for the payment or repayment of money may, in default of payment of the amount is payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

## CHAPTER XII.

### CONTEMPT OF COURT.

**83.** When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code,\* is committed in the view or presence of the Small Cause Court, the Court may cause the

\* Act XLV. of 1860.



offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognisance of the offence, and punish the offender with fine which may extend to two hundred rupees, and, in default of payment of such fine, with imprisonment in the civil jail for a term which may extend to one month, unless such fine is sooner paid.

**84.** In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code,\* the record must show the nature and stage of the judicial proceeding in which the Court, when interrupted or insulted, was sitting, and the nature of the interruption or insult offered.

**85.** If the Court considers that a person accused of any offence referred to in section 83, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is, for any other reason, of opinion that the case should not be disposed of under section 83, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Code of Criminal Procedure,† and may sentence the offender to punishment as provided in the section of the Indian Penal Code\* under which he is charged.

**86.** When the Court has, under section 83 or section 85, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on

\* Act XLV. of 1860.

† See now Act V. of 1898, Ch. XXXV. and s. 3 (1).

his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

**87.** If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court for any term not exceeding seven days unless, in the meantime, such person consents to answer such questions, or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 83 or section 85.

**88.** Any person deeming himself aggrieved by an order under section 83 or section 87 may appeal to the High Court, and the provisions of the Code of Criminal Procedure\* relating to appeals shall, so far as may be, apply to appeals under this section.

## CHAPTER XIII.

### MISCELLANEOUS.

**89.** Notices to produce documents, summonses to witnesses and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court, by general or special order, so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

**90.** The Small Cause Court shall keep such registers, books, and accounts, and submit to the High Court such statements and returns, as Registers and returns. may, subject to the approval of the Local Government, be prescribed by the High Court.

**91.** The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns, and state- Court to furnish records. &c., called for by Local Government or High Court.

\* See now Act V. of 1898, Ch. XXXI. and s. 3 (1).

ments in such form and manner as such Government or Court, as the case may be, thinks fit.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations. and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

93. The Governor-General and Members of his Council, the Certain persons exempt from arrest by Court. Governors of Fort St. George "Bombay and Fort William in Bengal,\* and the Members of their respective Councils,† and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, Chapter 104,‡ shall not be liable to arrest by order of the Small Cause Court.

No suit to lie upon decree of Court. 49. No suit shall lie on any decree of the Small Cause Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such Place of imprisonment. place as the Local Government, from time to time, appoints in this behalf.

96. If any person against whom any suit is brought for anything Tender in suit for anything thing purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

97. All prosecutions for anything purporting to be done under this Act must be commenced within Limitation of prosecutions. three months after the offence was committed.

\* Substituted for "and Bombay" by Act VII. of 1912.

† The words "the Lieutenant-Governor of Bengal" have been repealed here by Act VII. of 1912.

‡ The Indian High Courts Act, 1861.

## THE FIRST SCHEDULE.

(See section 2.)

## ENACTMENTS REPEALED.

*A.—Charters of the Supreme Courts.*

Date.		Extent of repeal.
26th Mar. 1774 ...	Charter of the Supreme Court at Fort William.	Clause 21.
26th Dec. 1800 ...	Charter of the Supreme Court at Madras.	Clause 47.
8th Dec. 1823 ...	Charter of the Supreme Court at Bombay.	Clause 59.

*B.—Acts of the Governor-General in Council.*

Number and year.	Subject or short title.	Extent of repeal.
IX. of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay.	So much as has not been repealed.
XX. of 1857 ...	To amend Act IX. of 1850 ...	The whole.
XXVI. of 1864 ...	To extend the jurisdiction of The Courts of Small Causes at Calcutta, Madras, and Bombay, and to provide for the appointment of an increased number of Judges of those Courts.	So much as has not been repealed.
I. of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X. of 1877*	The Code of Civil Procedure ...	Section 8, para. 2.

\* At the time Act XV. of 1882 was passed, the whole of Act X. of 1877 had been repealed by the Code of Civil Procedure (Act XIV. of 1882), which, now in its turn, has been superseded by the new Code (Act V. of 1908).

THE FIRST SCHEDULE—(*Continued*).(*See section 2.*)ENACTMENTS REPEALED—(*Continued*).*C.—Act of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
VI. of 1864    ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

## THE SECOND SCHEDULE.

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

[Repealed by Act I. of 1895, s. 12.]

## THE THIRD SCHEDULE.

## FORMS.

A.

(See section 53.)

*In the Small Cause Court for*

A. B.

(Plaintiff),

versus

C. D.

(Defendant).

A. B. of , in the town of , maketh oath [or affirms]  
 and saith that C, D. , of , is justly indebted to in  
 the sum of Rs. for arrears of rent of the house and premises  
 No. , situated at , in the town of , due for  
 months to wit, from to , at the rate of Rs. per  
 mensem.

Sworn [or affirmed] before me the day of 18 .

Judge [or Registrar].

B.

(See section 54.)

*In the Small Cause Court for*

## FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the  
 house and premises situate at No. , in the town of , for the sum  
 of Rs. and the costs of the distress, according to the provisions  
 of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated  
 the day of 18 .

(Signed and sealed.)

To E F, Bailiff and Appraiser.

THE THIRD SCHEDULE—(*continued*).FORMS—(*continued*).

## C.

(*See section 59.*)*In the Small Cause Court for*

## FORM OF INVENTORY AND NOTICE.

(*State particulars of property seized.*)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of Rs.                      being the amount of                      month's rent due to A. B. at                      last, and that, unless you pay the amount thereof, together with the costs of this distress within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882. Dated the                      day of                      18                      .

(Signed) E. F.,

*Bailiff and Appraiser.*

To C. D.

## D.

(*See section 64.*)*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the                      day of                      , under the provisions of Chapter VIII. of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or upon on your behalf, as the case may be*] under date the                      , and that the said property will be sold on the                      [two clear days at least after the date of the notice] at                      pursuant to the provisions of the said Act. Dated this                      day of                      18                      .

(Signed) E. F.,

G. H.,

*Bailiffs and Appraisers.*

To C. D.

## THE THIRD SCHEDULE—(concluded).

## FORMS—(concluded).

E.

(See section 66.)

*In the Small Cause Court for*

## SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.			Affidavit and war- rant to dis- train.	Order to sell.	Commis- sion.	Total.
Rs.	Rs.		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5	...		0 4 0	0 8 0	0 8 0	1 4 0
5 "	10	...	0 8 0	0 8 0	1 0 0	2 0 0
10 "	15	...	0 8 0	0 8 0	1 8 0	2 8 0
15 "	20	...	0 8 0	1 0 0	2 0 0	3 8 0
20 "	25	...	0 12 0	1 0 0	2 8 0	4 4 0
25 "	30	...	1 0 0	1 0 0	3 0 0	5 0 0
30 "	35	...	1 0 0	1 0 0	3 8 0	5 8 0
35 "	40	...	1 0 0	1 8 0	4 0 0	6 8 0
40 "	45	...	1 4 0	2 0 0	4 8 0	7 12 0
45 "	50	...	1 8 0	2 0 0	5 0 0	8 8 0
50 "	60	...	2 0 0	2 0 0	6 0 0	10 0 0
60 "	80	...	2 8 0	2 8 0	6 8 0	11 8 0
80 to 100	...	...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100	...	...	3 0 0	3 0 0	7 per centum	... ..

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.



## THE FOURTH SCHEDULE.

(See section 72.)

## FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0



# THE PRESIDENCY-TOWNS INSOLVENCY ACT, 1909.

(Act No. III. of 1909).

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THE FIRST SCHEDULE.—  
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THE THIRD SCHEDULE.—  
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# THE PRESIDENCY-TOWNS INSOLVENCY ACT

1909

(Act No. III. of 1909).

(RECEIVED THE G.-G.'S ASSENT ON THE 12TH MARCH 1909.)

*An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon.*

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns and the town of Rangoon; It is hereby enacted as follows :—

## PRELIMINARY.

Short title and commencement.

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909.

(2) It shall come into force on the first day of January 1910.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

- (a) "creditor" includes a decree-holder;
- (b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor;
- (c) "Official Assignee" includes an acting Official Assignee;
- (d) "prescribed" means prescribed by rules;
- (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;
- (f) "rules" means rules made under this Act;
- (g) "secured creditor" includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land;
- (h) "the Court" means the Court exercising jurisdiction under this Act; and
- (i) "transfer of property" includes a transfer of any interest therein and any charge created thereon.

## PART I.

## CONSTITUTION AND POWERS OF COURT.

*Jurisdiction.*

Courts having jurisdiction  
in insolvency.

3. The Courts having jurisdiction  
in insolvency under this Act shall be—

(a) the High Courts of Judicature at Fort William, Madras,  
and Bombay, and

(b) the Chief Court of Lower Burma.

4. All matters in respect of which jurisdiction is given by  
this Act shall be ordinarily transacted  
by a single Judge. and disposed of by or under the direc-  
tion of one of the Judges of the Court, and the Chief Justice or  
Chief Judge shall, from time to time, assign a Judge for that  
purpose.

5. Subject to the provisions of this Act and of rules, the Judge  
Exercise of jurisdiction in of a Court exercising jurisdiction in  
chambers. insolvency may exercise in chambers  
the whole or any part of his jurisdiction.

6. (1) The Chief Justice or Chief Judge may, from time to  
time, direct that, in any matters in  
Delegation of powers to officers of Court. respect of which jurisdiction is given to  
the Court by this Act, an officer of the Court appointed by him  
in this behalf shall have all or any of the powers in this section  
mentioned; and any order made or act done by such officer in  
the exercise of the said powers shall be deemed the order or act  
of the Court.

(2) The powers referred to in sub-section (1) are the following,  
namely:—

(a) to hear insolvency petitions presented by debtors,  
and to make orders of adjudication thereon;

(b) to hold the public examination of insolvents;

(c) to make any order, or exercise any jurisdiction, which is  
prescribed as proper to be made or exercised in  
chambers;

(d) to hear and determine any unopposed or *ex parte*  
application;

(e) to examine any person summoned by the Court under section 36.

(3) An officer appointed under this section shall not have power to commit for contempt of Court.

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice, or making a complete distribution of property in any such case.

### *Appeals.*

Appeals in insolvency.

8. (1) The Court may review, rescind, or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely :—

(a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency, and no further appeal shall lie except by leave of such judge ;

(b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way, and be subject to the same provisions, as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

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## PART II.

### PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

#### *Acts of Insolvency.*

Acts of insolvency.

9. A debtor commits an act of insolvency in each of the following cases, namely :—

- (a) if, in British India or elsewhere, he makes a transfer of all, or substantially all, his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;
- (d) if, with intent to defeat or delay his creditors,—
  - (i) he departs or remains out of British India,
  - (ii) he departs from his dwelling-house or usual place of business, or otherwise absents himself,
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;
- (e) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money ;
- (f) if he petitions to be adjudged an insolvent ;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

*Explanation.*—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

### *Order of Adjudication.*

**10.** Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Power to adjudicate.

*Explanation.*—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

**11.** The Court shall not have juris-

Restrictions on jurisdiction. diction to make an order of adjudication, unless—

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house, or has carried on business, either in person or through an agent, within the limits of the ordinary original civil jurisdiction of the Court; or
- (c) the debtor personally works for gain within those limits; or,
- (d) in the case of a petition by or against a firm of debtors, the firm has carried on business, within a year before the date of the presentation of the insolvency petition, within those limits.

Conditions on which creditor may petition.

**12. (1)** A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately, or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall, in his petition, either state that he is willing to relinquish his security

for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

**13.** (1) A creditor's petition shall be verified by affidavit of Proceedings and order on the creditor, or of some person on his creditor's petition. behalf having knowledge of the facts. .

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor, and

(b) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(3) The Court may adjourn the hearing of the petition, and order service thereof on the debtor.

(4) The Court shall dismiss the petition—

(a) if it is not satisfied with the proof of the facts referred to in sub-section (2); or

(b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency, or that, for other sufficient cause, no order ought to be made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if, on a hearing adjourned under sub-section (3), the debtor does not appear, and service of the petition on him is proved, unless, in its opinion, the petition ought to have been presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(7) Where proceedings are stayed, the Court may, if, by reason of the delay caused by the stay of proceedings or for any other cause, it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Conditions on which debtor may petition. 14. A debtor shall not be entitled to present an insolvency petition unless—

(a) his debts amount to five hundred rupees, or

(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

(c) an order of attachment in execution of such a decree has been made, and is subsisting against his property.

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication unless, in its opinion, the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition, and before an order of adjudication is made, appoint the Official Assignee to be *interim* receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the Official Assignee shall thereupon have such of the powers conferable on a Receiver appointed under the Code of Civil Procedure, 1908,\* as may be prescribed.

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\* Act V. 1908.

**17.** On the making of an order of adjudication, the property of the insolvent, wherever situate, shall vest in the Official Assignee, and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt proveable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or shall commence any suit or other legal proceeding except with the leave of the Court, and on such terms as the Court may impose:

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

**18. (1)** The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court, or in any other Court subject to the superintendence of the Court.

(2) An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

(3) Any Court in which proceedings are pending against a debtor may, on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

**19. (1)** If in any case the Court, having regard to the nature of the debtor's estate or business, or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the Official Assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the Official Assignee as may be entrusted to him by the Official Assignee or as the Court may direct.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.



20. Notice of every order of adjudication, stating the name, address, and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made, and the date of presentation of the petition, shall be published in the *Gazette of India*, and in the local official Gazette, and in such other manner as may be prescribed.

*Annulment of Adjudication.*

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found, or cannot be identified, shall be considered as paid in full if paid into Court.

22. Where it is proved to the satisfaction of the Court that insololvency proceedings are pending in any other British Court, whether within or without British India, against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication, or may stay all proceedings thereon.

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Official Assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein, on such terms and subject to such conditions (if any) as the Court may declare by order.

(2) Where a debtor has been released from custody under the provisions of this Act, and the order of adjudication is annulled

as aforesaid, the Court may, if it thinks fit, re-commit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so re-committed shall receive such debtor into his custody according to such re-commitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(3) Notice of the order annulling an adjudication shall be published in the *Gazette of India*, and in the local official Gazette, and in such other manner as may be prescribed.

*Proceedings consequent on Order of Adjudication.*

24. (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form, and containing such particulars of, and in relation to, his affairs as may be prescribed.

(2) The schedule shall be so submitted within the following times, namely :—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the Official Assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the Official Assignee may, at the expense of the estate, cause such a schedule to be prepared in manner prescribed.

25. (1) Any insolvent, who shall have submitted his schedule as aforesaid, may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

(2) A protection-order may apply, either to all the debts mentioned in the schedule, or to any of them, as the Court may think

proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection-order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release:

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection-order, but the insolvent shall be *prima facie* entitled to such order on production of a certificate signed by the Official Assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection-order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the Official Assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof, and, generally, as to the mode of dealing with the property of the insolvent.

(2) With respect to the summoning of, and proceedings at, a meeting of creditors, the rules in the First Schedule shall be observed.

27. (1) Where the Court makes an order of adjudication, it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure.

(4) The Official Assignee shall take part in the examination of the insolvent, and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(5) The Court may put such questions to the insolvent as it may think expedient.

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the insolvent, and signed by him, and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor at all reasonable times.

(7) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(8) Where the insolvent is a lunatic, or suffers from any such mental or physical affliction or disability as, in the opinion of the Court, makes him unfit to attend his public examination, or is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner, and at such place, as to the Court seems expedient.

### *Composition and Schemes of Arrangement.*

28. (1) An insolvent may, at any time after the making of an order of adjudication, submit a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the Official Assignee to a meeting of creditors.

(2) The Official Assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and, if, on the consideration of such proposal, the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The insolvent may, at the meeting, amend the terms of his proposal if the amendment is, in the opinion of the Official Assignee, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to, or dissent from, the proposal by a letter in the prescribed form addressed to the Official Assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present, and had voted at the meeting.

29. (1) The insolvent or the Official Assignee may, after approval of proposal by the Court, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may, at a meeting of creditors, have voted for the acceptance of the proposal.

(3) The Court shall, before approving the proposal, hear a report of the Official Assignee as to the terms thereof, and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts proveable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

**30.** (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and proveable in insolvency.

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

**31.** (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent, and annul the composition or scheme, and the property of the debtor shall thereupon vest in the Official Assignee, but without prejudice to the validity of any transfer or payment duly made, or of anything duly done, under or in pursuance of the composition or scheme.

(2) Where a debtor is re-adjudged insolvent under sub-section (1), all debts proveable in other respects which have been contracted before the date of such re-adjudication shall be proveable in the insolvency.

**32.** Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditors so far as regards a debt or liability from which under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency unless the creditor assents to the composition or scheme.

### *Control over Person and Property of Insolvent.*

**33.** (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the Official Assignee may require him to attend, and

Duties of insolvent as to discovery and realisation of property.

shall submit to such examination, and give such information, as the meeting may require.

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the Official Assignee or special manager,
- (d) execute such powers-of-attorney, transfers, and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the Official Assignee or special manager, or may be prescribed, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds among his creditors.

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the Official Assignee of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

34. (1) The Court may, either of its own motion, or at the instance of the Official Assignee or of any creditor, by warrant addressed

Arrest of insolvent.

to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison, or, if in prison, to be detained until such time as the Court may order, under the following circumstances, namely :—

(a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in insolvency against him ; or

(b) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the Official Assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents, or writings which might be of use to his creditors in the course of his insolvency ; or

(c) if he removes any property in his possession above the value of fifty rupees without the leave of the Official Assignee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

**35.** Where the Official Assignee has been appointed *interim* receiver, or an order of adjudication is made, the Court, on the application of the Official Assignee, may, from time to time, order that, for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels, and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, or delivered by the Postal authorities in British India to the Official Assignee, or otherwise as the Court directs ; and the same shall be done accordingly.

**36.** (1) The Court may, on the application of the Official Assignee, or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it, in such manner as may be prescribed, the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings, or property ; and the



Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings, or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings, or property, and such person may be represented by a legal practitioner.

(4) If, on the examination of any such person, the Court is satisfied that he is indebted to the insolvent, the Court may, on the application of the Official Assignee, order him to pay to the Official Assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent, the Court may, on the application of the Official Assignee, order him to deliver to the Official Assignee that property, or any part thereof, at such time, in such manner, and on such terms, as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money, or for the delivery of property, under the Code of Civil Procedure, 1908,\* respectively.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall, by such payment or delivery, be discharged from all liability whatsoever in respect of such debt or property.

**37.** The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908.\*

\* Act V. of 1908.

*Discharge of Insolvent.*

**38. (1)** An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

(2) On the hearing of the application, the Court shall take into consideration any report of the Official Assignee as to the insolvent's conduct and affairs, and, subject to the provisions of section 39, may—

- (a) grant or refuse an absolute order of discharge, or
- (b) suspend the operation of the order for a specified time, or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

**39. (1)** The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code,\* and shall, on proof of any of the facts hereinafter mentioned, either—

- (a) refuse the discharge ; or
- (b) suspend the discharge for a specified time ; or
- (c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors ;
- (d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the Official Assignee for any balance or part of any balance of the debts proveable under the insolvency which is not satisfied at the date of his discharge ; such balance or part of any balance of the debts to be paid out of the future earnings.

or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct; but, in that case, the decree shall not be executed without leave of the Court which leave may be given on proof that the insolvent has, since his discharge, acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities unless he satisfies the Court that the fact, that the assets are not of such value, has arisen from circumstances for which he cannot justly be held responsible ;
- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent ;
- (d) that the insolvent has contracted any debt proveable under this Act without having, at the time of contracting it, any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets, or for any deficiency of assets, to meet his liabilities ;
- (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;
- (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him ;
- (h) that the insolvent has, within three months preceding the time of presentation of the petition, incurred unjustifiable expense by bringing a frivolous or vexatious suit ;

(i) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(i) that the insolvent has concealed or removed his books or his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge, the report of the Official Assignee shall be *prima-facie* evidence, and the Court may presume the correctness of any statement contained therein.

**40.** Notice of the appointment by the Court of the day for hearing of application for discharge shall be published in the prescribed manner, and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the Official Assignee, and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

**41.** If an insolvent does not appear on the day so appointed for hearing his application for discharge, or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the Official Assignee or of a creditor, or of its own motion, may annul the adjudication, or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

**42.** (1) Where the Court refuses the discharge of the insolvent, it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

(2) Where an order of discharge is made subject to conditions, and, at any time after the expiration of two years from the date of the order, the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the

order, or of any substituted order, in such manner, and upon such conditions, as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the Official Assignee may require in the realisation and distribution of such of his property as is vested in the Official Assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

44. In either of the following cases, that is to say—

- (1) in the case of a settlement made before and in consideration of marriage where the settler is not, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement; or,
- (2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settler's wife or children of any money or property wherein he had not, at the date of his marriage, any estate or interest (not being money or property of, or in right of, his wife);

if the settler is adjudged insolvent or compounds or arranges with his creditors, and it appears to the Court that the settlement covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable, having regard to the state of the settler's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(d) any liability under an order for maintenance made under section 488 of the Code of Criminal Procedure, 1898.\*

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts proveable in insolvency.

(3) An order of discharge shall be conclusive evidence of the insolvency, and of the validity of the proceedings therein.

(4) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound, or had made any joint contract with him, or any person who was surety, or in the nature of a surety, for him.

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## PART III.

### ADMINISTRATION OF PROPERTY.

#### *Proof of Debts.*

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be proveable in insolvency.

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts proveable in insolvency.

(4) An estimate shall be made by the Official Assignee of the value of any debt or liability proveable as aforesaid which, by

reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value :

Provided that, if, in his opinion, the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not proveable in insolvency.

*Explanation.*—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur, or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of, money or money’s worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any contingency or contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

**47.** Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively :

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had, at the time of giving credit to the insolvent, notice of the presentation of any insolvency petition by or against him.

**48.** With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

**49.** (1). In the distribution of the property of the insolvent, there shall be paid, in priority to all other debts—

Priority of debts.

- (a) all debts due to the Crown or to any local authority;
- (b) all salary or wages of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer, and
- (c) rent due to a landlord from the insolvent: provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership-property shall be applicable in the first instance in payment of the partnership-debt and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership-property; and where there is a surplus of the partnership-property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership-property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

**50.** After an order of adjudication has been made, no distress  
 Rent due before adjudica- for rent due before such order shall be  
 tion. made upon the goods or effects of the  
 insolvent, unless the order be annulled, but the landlord or party  
 to whom the rent may be due shall be entitled to prove in respect  
 of such rent.



*Property available for Payment of Debts.*

**51.** The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at,—

- (a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or,
- (b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition :

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

**52.** (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely—

Description of insolvent's property divisible amongst creditors.

- (a) property held by the insolvent on trust for any other person ;
  - (b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife, and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.
- (2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely—
- (a) all such property as may belong to, or be vested in, the insolvent at the commencement of the insolvency, or may be acquired by, or devolve on, him before his discharge ;
  - (b) the capacity to exercise, and to take proceedings for exercising, all such powers in or over, or in respect of, property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge ; and

(c) all goods, being, at the commencement of the insolvency, in the possession, order, or disposition of the insolvent, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c)

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

*Effect of Insolvency on Antecedent Transactions.*

53. (1) Where execution of a decree has issued against the

Restriction of rights of creditor under execution. property of a debtor, no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the order of adjudication, and before he had notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who, in good faith, purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the Official Assignee.

54. Where execution of a decree has issued against any

Duties of Court executing decree as to property taken in execution. property of a debtor which is saleable in execution, and, before the sale thereof, notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the Official Assignee, but the costs of the execution shall be a first charge on the property so delivered, and the Official Assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

55. Any transfer of property, not being a transfer made before

Avoidance of voluntary transfer. and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith, and for valuable consideration, shall, if the

transferor is adjudged insolvent within two years after the date of the transfer, be void against the Official Assignee.

**56. (1)** Every transfer of property, every payment made, Avoidance of preference in every obligation incurred, and every certain cases. judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the Official Assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

**57.** Subject to the foregoing provisions with respect to the Protection of *bond fide* effect of insolvency on an execution, and transactions. with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate, in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors;
- (b) any payment or delivery to the insolvent;
- (c) any transfer by the insolvent for valuable consideration;  
or
- (d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

### *Realisation of Property.*

**58. (1)** The Official Assignee shall, as soon as may be, take Possession of property by possession of the deeds, books, and documents of the insolvent and all other parts of his property capable of manual delivery.  
Official Assignee.

(2) The Official Assignee shall, in relation to, and for the purpose of acquiring or retaining possession of, the property of the insolvent, be in the same position as if he were a receiver of the

property appointed under the Code of Civil Procedure, 1908,\* and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the Official Assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the Official Assignee.

(5) Any treasurer or other officer, or any banker, attorney, or agent of an insolvent, shall pay and deliver to the Official Assignee all money and securities in his possession or power as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the insolvent or the Official Assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the Official Assignee.

59. (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent, or of any other person, and, with a view to such seizure, to break open any house, building, or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid, who may execute it according to its tenor.

60. (1) Where an insolvent is an officer of the Army or Navy, or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the Official Assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication, and from time to time, make such order as it thinks just for the payment to the Official Assignee, for distribution among the creditors, of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

**61.** The property of the insolvent shall pass from Official Assignee to Official Assignee, and shall vest in the Official Assignee for the time being during his continuance in office, without any transfer whatever.

**62. (1)** Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Official Assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him, at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property:

Provided that, where any such property has not come to the knowledge of the Official Assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interests, and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the Official Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property, and the Official Assignee from liability, affect the rights or liabilities of any other person.

**63.** Subject always to such rules as may be made in this behalf, the Official Assignee shall not be entitled to disclaim any leasehold interest.

without the leave of the Court; and the Court may, before or on granting such leave require such notice to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just.

**64.** The Official Assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the Official Assignee by any person interested in the property requiring him to decide whether he will disclaim, and the Official Assignee has, for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and, in the case of a contract, if the Official Assignee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it.

**65.** The Court may, on the application of any person who is, as against the Official Assignee, entitled to the benefit, or, subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

**66. (1)** The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in, or delivery thereof to, any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and, on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Provided, always, that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in

favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee, except upon the terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable, either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed, and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

**67.** Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

**68.** (1) Subject to the provisions of this Act, the Official Assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

(a) sell all or any part of the property of the insolvent;

(b) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent;

- (e) employ a legal practitioner or other agent to take proceedings or do any business which may be sanctioned by the Court;
  - (f) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time, or fully-paid shares, debentures, or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit;
  - (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts, or for the purpose of carrying on the business;
  - (h) refer any dispute to arbitration, and compromise all debts, claims, and liabilities on such terms as may be agreed upon;
  - (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances cannot readily or advantageously be sold.
- (2) The Official Assignee shall account to the Court and pay over all moneys, and deal with all securities, in such manner as is prescribed, or as the Court directs.

### *Distribution of Property.*

**69.** (1) The Official Assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the Official Assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the Official Assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.



(5) When the Official Assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and, if required by any creditor, a statement in the prescribed form as to the particulars of the estate.

**70.** Where one partner in a firm is adjudged insolvent, a creditor, to whom the insolvent is indebted jointly with the other partners in the firm or any of them, shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of their respective debts.

**71. (1)** In the calculation and distribution of dividends, the Official Assignee shall retain in his hands sufficient assets to meet—

(a) debts proveable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that, in the ordinary course of communication, they have not had sufficient time to tender their proofs;

(b) debts proveable in insolvency, the subject of claims not yet determined;

(c) disputed proofs or claims; and

(d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

**72.** Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any money for the time being in the hands of the Official Assignee, any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

**73. (1)** When the Official Assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insol-

vency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner, prescribed to the persons whose claims to be creditors have been notified to him, but not proved, that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court, on application by any such claimant, grants him further time for establishing his claim, then, on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts without regard to the claims of any other persons.

**74.** No suit for a dividend shall lie against the Official Assignee, but, where the Official Assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

**75.** (1) Subject to such conditions and limitations as may be prescribed, the Official Assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Official Assignee may direct.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

**76.** The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act, and of the expenses of the proceedings taken thereunder.

## PART IV.

## OFFICIAL ASSIGNEES.

**77. (1)** The Chief Justice of each of the High Courts of Judicature at Fort William, Madras, and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may, from time to time, appoint, substantively or temporarily, such person as he thinks fit to the office of Official Assignee of insolvent's estate.

(2) Every Official Assignee shall give such security, and shall be subject to such rules, and shall act in such manner, as may be prescribed.

(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of Official Assignee immediately before the commencement of this Act in the Courts for the Relief of Insolvent Debtors at Calcutta, Madras, and Bombay, respectively, under the Indian Insolvency Act, 1848,\* and in the Chief Court of lower Burma under that Act as applied by the Lower Burma Courts Act, 1900,† shall, without further appointment for that purpose, become the Official Assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras, and Bombay, and in the Chief Court of Lower Burma, respectively.

**78.** An Official Assignee may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

**79. (1)** The duties of an Official Assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the Official Assignee—

(a) to investigate the conduct of the insolvent, and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes

\* Stat. 11 & 12 Vict., c. 21.

† Act VI. of 1900.

an offence under this Act, or under sections 421 to 424 of the Indian Penal Code\* in connection with his insolvency, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge ;

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct, or as may be prescribed ; and

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct, or as may be prescribed.

**80.** The Official Assignee shall, whenever required by any  
 Duty to furnish list of creditor so to do, and on payment by the  
 creditors. creditor of the prescribed fee, furnish  
 and send to the creditor by post a list of the creditors, showing in  
 the list the amount of the debt due to each of the creditors.

**81.** (1) Such remuneration shall be  
 Remuneration. paid to the Official Assignee as may be  
 prescribed.

(2) No remuneration whatever beyond that referred to in sub-  
 section (1) shall be received by an Official Assignee as such.

**82.** The Court shall call the Official Assignee to account for  
 Misfeasance. any misfeasance, neglect, or omission  
 which may appear in the accounts or  
 otherwise, and may require the Official Assignee to make good any  
 loss which the estate of the insolvent may have sustained by reason  
 of the misfeasance, neglect, or omission.

**83.** The Official Assignee may sue and be sued by the name  
 Name under which to sue of " the Official Assignee of the property  
 or be sued. of , an insolvent," inserting the  
 name of the insolvent, and by that name may hold property of every  
 description, make contracts, enter into any engagements binding on  
 himself and his successors in office, and do all other acts necessary  
 or expedient to be done in the execution of his office.

**84.** If an order of adjudication is made against an Official  
 Office vacated by insol- Assignee, he shall thereby vacate the  
 vency. office of Official Assignee.

85. (1) Subject to the provisions of this Act, and to the Discretionary powers and directions of the Court, the official control thereof. Assignee shall, in the administration of the property of the insolvent, and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting.

(2) The Official Assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The Official Assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the Official Assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the Official Assignee, he may appeal to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just.

87. (1) If any Official Assignee does not faithfully perform his duties, and duly observe all the requirements imposed on him by any enactment, rules, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter, and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any Official Assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an investigation to be made of the books and vouchers of the Official Assignee.

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## PART V.

## COMMITTEE OF INSPECTION.

88. The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a Committee of Inspection for the purpose of superintending the administration of the insolvent's property by the Official Assignee:

Provided that a creditor who is appointed a member of a Committee of Inspection shall not be qualified to act until he has proved.

Control of Committee of Inspection over Official Assignee.

89. The Committee shall have such powers of control over the proceedings of the Official Assignee as may be prescribed.

## PART VI.

## PROCEDURE.

90. (1) In proceedings under this Act, the Court shall have the like powers, and follow the like procedure, as it has and follows in the exercise of its ordinary original civil jurisdiction:

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where, by this Act or by rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof upon such terms, if any, as the Court thinks fit to impose.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the Official Assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(8) For the purposes of this Act, the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras, and Bombay respectively.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms, and subject to such conditions, as the Court thinks just.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

**96.** Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Power to dismiss petition against some respondents only.

**97.** Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Separate insolvency petitions against partners.

**98. (1)** Where a partner in a firm is adjudged insolvent, the Court may authorize the Official Assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

Suits by Official Assignee and insolvent's partners.

**(2)** Where application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner, and he may show cause against it, and, on his application, the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

**99. (1)** Any two or more persons being partners, or any person carrying on business under a partnership-name, may take proceedings, or be proceeded against under this Act in the name of the firm:

Proceedings in partnership-name.

Provided that, in that case, the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership-name, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

**(2)** In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.



**100.** (1) A warrant of arrest issued by the Court may be executed in the same manner, and subject to the same conditions, as a warrant of arrest issued under the Code of Criminal Procedure, 1898,\* may be executed.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84, and 102 of the said Code\* shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner, and subject to the same conditions, as a search-warrant for property supposed to be stolen may be executed under the said Code.\*

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## PART VII.

### LIMITATION.

**101.** The period of limitation for an appeal from any act or decision of the Official Assignee, or from an order made by an officer of the Court empowered under section 6, shall be twenty days from the date of such act, decision, or order, as the case may be.

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## PART VIII.

### PENALTIES.

**102** An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Punishment of insolvents for certain offences.

**103.** Any person adjudged insolvent who—

(a) fraudulently, with the intent to conceal the state of his affairs, or to defeat the objects of this Act,—

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\* Act V. of 1898.

**105.** Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

## PART IX.

### SMALL INSOLVENCIES.

**106.** Where the Court is satisfied by affidavit or otherwise, or Summary administration the Official Assignee reports to the Court, in small cases. that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely—

- (a) no appeal shall lie from any order of the Court except by leave of the Court;
  - (b) no examination of the insolvent shall be held except on the application of a creditor or the Official Assignee;
  - (c) the estate shall, where practicable, be distributed in a single dividend;
  - (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:
- Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.
- (2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

## PART X.

### SPECIAL PROVISIONS.

**107.** No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment, from insolvency proceedings, etc., from insolvency proceedings, or company registered under any enactment for the time being in force.

**108. (1)** Any creditor, of a deceased debtor whose debt Administration in insol- would have been sufficient to support an vency of estate of person insolvency petition against the debtor dying insolvent. had he been alive, may present, to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown, dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

**109. (1)** Upon an order being made for the administration Vesting of estate and mode of a deceased debtor's estate under section 108, the property of the debtor shall of administration. vest in the Official Assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(2) With the modification hereinafter mentioned, all the provisions of Part III., relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the Official Assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses

incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the Official Assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

**110. (1)** After notice of the presentation of a petition under Payments or transfer by section 108, no payment or transfer of legal representatives properly made by the legal representative shall operate as a discharge to him as between himself and the Official Assignee.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative, or by a District Judge acting under the powers conferred on him by section 64 of the Administrator-Generals Act, 1874,\* before the date of the order for administration.

**111.** The provisions of sections 108, 109, and 110 shall not Savary of jurisdiction of letters of administration to the estate of Administrator-General.

## PART XI.

### RULES.

**112. (1)** The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for, and the account to which they are to be paid;

- (b) the investment, whether separately or collectively, of unclaimed dividends, balances, and other sums appertaining to the estates of insolvent debtors, whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;
- (c) the proceedings of the Official Assignee in taking possession of and realizing the estates of insolvent debtors;
- (d) the remuneration of the Official Assignee;
- (e) the receipts, payments, and accounts of the Official Assignee;
- (f) the audit of the accounts of the Official Assignee;
- (g) the payment of the remuneration of the Official Assignee, of the costs, charges, and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands;
- (h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the Official Assignee under the direction of the Court out of the proceeds aforesaid;
- (i) the payment of any civil liability incurred by an Official Assignee acting under the order or direction of the Court;
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (k) the intervention of the Official Assignee at the hearing of applications and matters relating to insolvent debtors and their estates;
- (l) the examination by the Official Assignee of the books and papers of account of undischarged insolvent debtors;
- (m) the service of notices in proceedings under this Act;
- (n) the appointment, meetings, and procedure of committees of Inspection;
- (o) the conduct of proceedings under this Act in the name of a firm;
- (p) the forms to be used in proceedings under this Act;

(g) the procedure to be followed in the case of estates to be administered in a summary manner ;

(r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act.

**113.** Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, and to the previous sanction of the Governor-General in Council, and, in the case of any other Court, of the Local Government.

**114.** Rules so made and sanctioned shall be published in the *Gazette of India*, or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act.

## PART XII.

### SUPPLEMENTAL.

**115.** (1) Every transfer, mortgage, assignment, power-of-attorney, proxy-paper, certificate, affidavit, bond, or other proceedings, instrument, or writing whatsoever before, or under any order of, the Court, and any copy thereof, shall be exempt from payment of any stamp or other duty whatsoever.

(2) No stamp-duty or fee shall be chargeable for any application made by the Official Assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

**116.** (1) A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

**117.** Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn—

Swearing of affidavits.

(a) in British India, before—

(i) any Court or Magistrate, or

(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908;\*

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court, or before a Justice of the Peace for the county or place where it is sworn;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate, or Justice of the Peace; and,

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified, as aforesaid, by a British Minister or British Consul or British Political Agent, or by a Notary Public).

**118.** (1) No proceeding in insolvency shall be invalidated by

Formal defect not to invalidate proceedings. any formal defect, or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an Official Assignee or member of a Committee of Inspection shall vitiate any act done by him in good faith.

**119.** Where an insolvent is a trustee within the Indian Trustee

Application of Trustee Act, 1866,† section 35 of that Act shall to insolvency of trustee. have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

\* Act V. of 1908.

† Act XXVII. of 1866.

**120.** Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

**121.** Nothing in this Act, or in any transfer of jurisdiction saving for existing rights effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

**122.** Where the Official Assignee has under his control any Lapse and credit to Government dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

**123.** Any person claiming to be entitled to any moneys paid to Government under section 122 may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor-General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

**124. (1)** No person shall, as against the Official Assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent, or to set up any lien thereon.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the Official Assignee.



**125.** Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Fees and percentages.

**126.** All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the Bankruptcy Act, 1883,\* and to section 50 of the Provincial Insolvency Act, 1907.†

Courts to be auxiliary to each other.

**127.** (1) The enactments mentioned in the third schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeal of enactments.

(2) Notwithstanding the repeal effected by this Act, the proceedings under an insolvency petition under the Indian Insolvency Act, 1848,‡ pending at the commencement of this Act, shall, except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

## THE FIRST SCHEDULE.

(See section 26.)

### MEETINGS OF CREDITORS.

1. The Official Assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting, or whenever requested in writing by one-fourth in value of the creditors who have proved.

Meetings of creditors.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the Official Assignee.

Summoning of meetings.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting, and may be delivered per-

Notice of meetings.

\* Stat. 46 & 47 Vic., c. 52.

† Act III. of 1907.

‡ Stat. 11 & 12 Vic., c. 21.

sonally, or sent by prepaid post letter, as may be convenient. The Official Assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper, or in the local official Gazette.

4. It shall be the duty of the insolvent to attend any meeting Duty of insolvent to attend which the Official Assignee may, by notice, require him to attend and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

5. The proceedings held and resolutions passed at any meeting Proceedings not to be avoided for non-receipt of shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

6. A certificate of the Official Assignee, that the notice of any meeting has been duly given, shall be sufficient evidence of such notice.

7. Where, on the request of creditors, the Official Assignee having been duly sent to the person to whom the same was addressed, summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the Official Assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

8. The Official Assignee shall be the Chairman of any meeting.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the Secured creditor.

date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Assignee before the proof can be admitted for voting.

13. It shall be competent to the Official Assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated.

14. If one partner in a firm is adjudged insolvent, any creditor or to whom that partner is indebted jointly with the other partners in the firm, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

15. The Official Assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

16. A creditor may vote either in person or by proxy.

17. Every instrument of proxy shall be in the prescribed form, and shall be issued by the Official Assignee.

18. A creditor may give a general proxy to his attorney, or to his manager or clerk, or any other person in his regular employment. In such

case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A proxy shall not be used unless it is deposited with the Official Assignee one clear day before the time appointed for the meeting at which it is to be used.

20. A creditor may appoint the Official Assignee to act as his proxy.

21. The Official Assignee may adjourn the meeting from time to time, and from place to place, and no notice of the adjournment shall be necessary.

22. The Official Assignee shall draw up a minute of the proceedings at, the meeting, and shall sign the same.

## THE SECOND SCHEDULE.

(See section 48.)

### PROOF OF DEBTS.

#### *Proofs in Ordinary Cases.*

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

2. A proof may be lodged by delivering or sending by post in a registered letter to the Official Assignee an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Assignee may at any time call for the production of the vouchers.

Contents of affidavit.

Affidavit to state if creditor holds security.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proving debts.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

### *Proof by Secured Creditors.*

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the Official Assignee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued, the Official Assignee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the Official Assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times, and on such terms and conditions, as may be agreed on between the creditor and the Official Assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the Official Assignee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the Official Assignee to elect whether he will or will not exercise his power of redeeming the security, or requiring it to be realized, and if the Official Assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the Official Assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing, to the satisfaction of the Official Assignee or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the Official Assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid, out of any money for the time being available for dividend, any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor, after having valued his security, subsequently amends where security realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing Exclusion from sharing in rules, he shall be excluded from all dividend.

share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.
- Limit of receipt.

*Taking Accounts of Property Mortgaged, and of the Sale thereof.*

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate, and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the Official Assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest, and costs due upon such mortgage, and of the rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person by his order, or for his use in case he has been in possession of the property over which the mortgage extends or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when, and where, and by whom and in what way, the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the Official Assignee (unless it is otherwise ordered) shall have the conduct of such sale: but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance.

19. All proper parties shall join in the conveyance to the purchaser as the Court directs.

20. The moneys to arise from such sale shall be applied, in the first place, in payment of the costs, charges, and expenses of and occasioned by the application to the Court, and of such sale, and the commission (if any) of the Official Assignee, and, in the next place, in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee for principal, interest, and costs, and

Proceeds of sale.

the surplus of the sale moneys (if any) shall then be paid to the Official Assignee. But, if the moneys to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchases, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books, and writings in their respective custody or power relating to the estate, or effects of the insolvent as the Court directs.

### *Periodical Payments.*

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order, as if the rent or payment grew due from day to day.

### *Interest.*

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is over-due when the debtor is adjudged an insolvent, and which is proveable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest,



the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

*Debt payable at a Future Time.*

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or Rejection of Proofs.*

25. The Official Assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

26. If the Official Assignee thinks that a proof has been improperly admitted, the Court may, on the application of the Official Assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the Official Assignee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the insolvent.

## THE THIRD SCHEDULE.

(See section 127.)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
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## I.—Statute.

1848	11&12 Vict., c. 21.	The Indian Insolven- cy Act, 1848.	So much as has not been re- pealed.
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## II.—Acts of the Governor-General in Council.

1841	XXVII.	The Insolvent Es- tates (Unclaimed Dividends) Act, 1841.	So much as has not been re- pealed.
1898	X.	The Indian Insol- vency Rules Act, 1898.	Sections 2 and 3.
1900	VI.	The Lower Burma Courts Act.	Section 8, sub-section (1), clause (d), and sub-section (2); and, in section 17, in sub-section (1), the words "an official assignee", and, in sub-sec- tions (2) and (4), the words "official assignee."
1908	V.	The Code of Civil Procedure, 1908.	Section 120, sub-section (2).



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The Probate and Administration Act, 1881.

[As amended up to July 1911.]

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4,000-11-9-8-1911.

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# ACT NO. V. OF 1881 :

## The Probate and Administration Act, 1881.\*

RECEIVED THE G.G's ASSENT ON THE 21ST JANUARY 1881.

*An Act to provide for the Grant of Probates of Wills and Letters of Administration to the Estate of certain Deceased Persons.*

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,† does not apply ; It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

Short title.

1. This Act may be called the Probate and Administration Act, 1881 :

Local extent.

It applies to the whole of British India ;

Commencement.

and it shall come into force on the first day of April 1881.

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Pt. V., p. 763 ; for the First Report of the Select Committee, see *ibid*, 1880, Pt. V., p. 35 ; for Discussions in Council, see *ibid*, 1879, Supplement, pp. 593 and 743 ; 1880, pp. 515, 556 ; and *ibid*, 1881, pp. 10, 47, and 87.

Act V. of 1881 has been declared in force in the town of Mandalay by the Upper Burma Laws Act (XX. of 1886), s. 6 ; and in British Baluchistan by the British Baluchistan Laws Regulation (I of 1890), s. 3 ; and ss. 153 and 154 of the Act have been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), s. 2.

It has been declared under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following deregulationized Scheduled Districts in the Chuttia Nagpur Division, namely, the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I., p. 504, (The District of Lohardaga included at this time the Palamau District. which was separated in 1894.)

It has been extended, under s. 5 of the same Act, to the whole of Upper Burma except the Shan States.—See *Burma Gazette*, 1893, Pt. I., p. 154.

† Act X. of 1865.

2. Chapters II. to XIII., both inclusive, of this Act shall apply, in the case of every Hindu, Muhammadan, Buddhist, and persons exempted under section 332 of the Indian Succession Act, 1865,\* dying before, on, or after the said first day of April 1881 :

Personal application. Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day :

Provided also that, except in cases to which the Hindu Wills Act, 1870,† applies,

no Court in any local area beyond the limits of the towns of Calcutta, Madras, and Bombay, and the territories for the time being administered by the Chief Commissioner of British Burma,‡

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorize it so to do.§

\* Act X. of 1865.

† The Hindu Wills Act (XXI. of 1870) applies, in the cases of Hindus, Jains, Shikhs, and Buddhists, in the territories subject to the Lieutenant-Governor of Bengal, and in the towns of Madras and Bombay.

‡ Read now Lower Burma (see the Upper Burma Laws Act XX. of 1886, s. 4). The Chief Commissioner is now Lieutenant-Governor of Burma.—See Proclamation dated 11th April, 1897, *Gazette of India*, 1897, Pt. I., p. 261.

§ The following Courts have been authorized to receive applications for probate or letters of administration within the areas mentioned, namely :—

in Bengal—the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal ; all District Judges, as defined in the Act, within the said territories ; and such Judicial Officers as the High Court may, from time to time, appoint as District Delegates (see *Calcutta Gazette*, 1881, Pt. I., p. 445) ;

in the Andaman and Nicobar Islands—the Court of the Deputy Superintendent and the Court of the Chief Commissioner (see *Gazette of India*, 1881, Pt. I., p. 214) ;

in Assam—the High Court at Calcutta, throughout Assam ; all District Judges, as defined in the Act, within the Province ; and such Judicial Officers as the High Court may from time to time, appoint as District Delegates (see *Assam Manual of Local Rules and Orders*, Ed. 1893, p. 180) ;

Interpretation-clause.

3.\* In this Act, unless there be something repugnant in the subject or context,—

"province" includes any division of British India having a Court of the last resort :

"minor" means any person subject to the Indian Majority Act, 1875,† who has not attained his majority within the meaning

in the Punjab—the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may, from time to time, appoint as District Delegates (see *Punjab Gazette*, 1881, Pt. I., p. 483);

in Madras—the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may, from time to time, appoint as Delegates (see *Madras List of Local Rules and Orders*, Ed. 1898, p. 161);

in the Central Provinces—the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner, and all Deputy Commissioners within those territories (see *Central Provinces List of Local Rules and Orders*, Ed. 1896, p. 97);

in Coorg—the Court of the Judicial Commissioner and the Court of the Commissioner (see *Coorg District Gazette*, 1889, Pt. I. p. 50);

in Bombay—the High Court at Bombay, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may, from time to time, appoint as District Delegates (see *Bombay List of Local Rules and Orders*, Ed. 1896, Vol. I., p. 252);

in Ajmere-Merwara—the Court of the Chief Commissioner and the Court of the Commissioner (see *Gazette of India*, 1889, Pt. II., p. 534);

in the N.-W. Provinces and Oudh—the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner; all District Judges, as defined in the Act, within the N.-W. Provinces and Oudh; and such Judicial Officers as the High Court or the Judicial Commissioner may, from time to time, appoint as District Delegates (see *N.-W. Provinces and Oudh List of Local Rules and Orders*, Ed. 1894, Pt. II., p. 48);

in Upper Burma: the Court of the Judicial Commissioner and all District Courts (see *Burma Gazette*, 1897, Pt. I., p. 289).

\* Compare Act X. of 1865, s. 3.

† Act IX. of 1875.

of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; and

"District Judge" means the Judge of a principal Civil Court of original jurisdiction.

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## CHAPTER II.

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.\*

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

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\* Compare Act X. of 1865, Pt. XXIX. As to grants of letters of administration and probates to the Administrator-General, see the Administrator-General's Act (II. of 1874).

5. When a will has been proved and deposited in a Court of Administration with copy competent jurisdiction, situated beyond annexed of authenticated the limits of the province, whether in the copy of will proved abroad. British dominions or in a foreign country, and a properly-authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment, express or implied.

7. The appointment may be express, or by necessary implication.

### *Illustrations.*

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but, should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor, or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

### *Illustration.*

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first, and then to C, or to C first, then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Separate probate of codicil discovered after grant of probate.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

**Procedure when different executors appointed by codicil.**

**11.** When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

**Accrual of representation to surviving executor.**

**12.** Probate of a will, when granted, establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

**Effect of probate.**

**13.** Letters of administration cannot be granted to any person who is a minor, or is of unsound mind.

**To whom administration may not be granted.**

**14.** Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

**Effect of letters of administration.**

**15.** Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

**Acts not validated by administration.**

**16.** When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship;

**Grant of administration where executor has not renounced.**

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

**Exception.**

**17.** The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

**Form and effect of renunciation of executorship.**

**18.** If the executor renounce or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration, with a copy of the will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

**19.** When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor, who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

a universal or a residuary legatee may be admitted to prove the will, and letters of administration, with the will annexed, may be granted to him of the whole estate, or of so much thereof as may be unadministered.

**20.** When a residuary legatee, who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration, with the will annexed, as such residuary legatee.

**21.** When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

**22.** Letters of administration, with the will annexed, shall not be granted to any legatee, other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

**23.** When the deceased has died intestate, administration of

To whom administration his estate may be granted to any person may be granted. who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

### CHAPTER III.

#### OF LIMITED GRANTS.\*

##### (a.)—*Grants limited in Duration.*

**24.** When the will has been lost or mislaid since the testator's

Probate of copy or draft of death, or has been destroyed by wrong lost will. or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

**25.** When the will has been lost or destroyed, and no

Probate of contents of lost copy has been made, nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

**26.** When the will is in the possession of a person residing

Probate of copy where original exists. out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

**27.** Where no will of the deceased is forthcoming but there

Administration until will is reason to believe that there is a will produced. in existence, letters of administration

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\* Compare Act X. of 1865, Pt. XXX. (a) to (f).



may be granted, limited until the will or an authenticated copy of it be produced.

*(b.)—Grants for the Use and Benefit of Others having Right.*

**28.** When any executor is absent from the province in which Administration with will application is made, and there is no annexed to attorney of absent executor within the province willing to act, letters of administration, with the will annexed, may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

**29.** When any person, to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his agent, limited as above mentioned.

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

**30.** When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

**31.** When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

**32.** When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

**33.** If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to

Administration for use and benefit of lunatic.

the rule<sup>a</sup> for the distribution of intestates' estate applicable in the case of the deceased, be a minor or lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority, or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or *Administration pendente lite*. revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.)—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be *Probate limited to purpose specified in will.* limited to that purpose; and, if he should appoint an agent to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

36. If an executor appointed generally give an authority to an *Administration with will annexed limited to particular purpose.* attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

37. Where a person dies, leaving property of which he was *Administration limited to trust-property.* the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending *Administration limited to suit.* suit, and the executor or person entitled

<sup>a</sup> *Sic.* Read "rules."

to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

**39.** If, at the expiration of twelve months from the date of

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

any probate or letters of administration, the executor or administrator, to whom the same has or have been granted, is absent from the province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

**40.** In any case in which it appears necessary for preserving

Administration limited to collection and preservation of deceased's property.

the property of a deceased person, the Court, within whose district any of the property is situate, may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

**41.** When a person has died intestate, or leaving a will of

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person resident out of the province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who, under ordinary circumstances, would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and, in every such case, letters of administration may be limited or not, as the Judge thinks fit.

*(d.)—Grants with Exception.*

**42.** Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed, shall be granted, subject to such exception.

Probate or administration, with will annexed, subject to exception.

**43.** Whenever the nature of the case requires that an exception be made, letters of administration shall be granted, subject to such exception.

Administration with exception.

*(e.)—Grants of the Rest.*

**44.** Whenever a grant, with exception of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of the rest.

*(f.)—Grants of Effects unadministered.*

**45.** If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

**46.** In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

**47.** When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

## CHAPTER IV.

## ALTERATION AND REVOCATION OF GRANTS.\*

48. Errors in names and descriptions, or in setting forth the

What errors may be rectified by Court. time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will

Procedure where codicil discovered after grant of administration with will annexed.

annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Revocation or annulment for just cause.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

*Explanation.*—"Just cause" is—

*1st*, that the proceedings to obtain the grant were defective in substance ;

*2nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

*3rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

*4th*, that the grant has become useless and inoperative through circumstances ;

*5th*, that the person to whom the grant was made has, wilfully and without reasonable cause, omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII. of this Act, or has exhibited under that chapter an inventory or account which is untrue in a material respect.

*Illustrations.*

(a.) The Court by which the grant was made had no jurisdiction.

\* Compare Act X. of 1865, Pt. XXX. (g) and (h).

† Cl. 5th has been added by the Probate and Administration Act (VI. of 1889), s. 11.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h.) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

## CHAPTER V.

### OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.\*

**51.** The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

**52.** The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases within such local limits as it may, from time to time, prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

**53.** The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

\* Compare Act X. of 1865, Pt. XXXI., as amended by Acts XXIII. of 1875 and VI. of 1881.

**54.** The District Judge may order any person to produce District Judge may order and bring into Court any paper or writing being or purporting to be testamentary papers. testamentary which may be shown to be in the possession or under the control of such person ;

and, if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same ;

and he shall be bound to answer such questions as may be put to him by the Court, and if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code,\* in case of default in not attending, or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default ;

and the costs of the proceeding shall be in the discretion of the Judge.

**55.** The proceedings of the Court of the District Judge, in Proceedings of District Judge's Court in relation to probate and administration. relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.†

**56.** Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same, that the testator or intestate, as the case may be, had, at the time of his decease, a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

**57.** When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion, refuse the application, if, in his judgment, it could be

\* See Act XLV. of 1860.

† See now Act XIV. of 1882, s. 3.

disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the province in which the same is or are\* granted, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

† “ Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property affected beyond the limits of the province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.”

60.‡ (1) Where probate or letters of administration has or have been granted by a Court with the effect referred to in the

\* The words “ or are ” have been inserted by the Repealing and Amending Act (XII. of 1891).

† This proviso has been substituted for the original by Act VIII. of 1903.

‡ S. 60 has been re-enacted by Act VIII. of 1903.



proviso to section 59, the High Court or District Judge shall send a certificate thereof to the following Courts, namely :—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate, and to each of the other High Courts.

(c) Every certificate referred to in sub-section (1) shall be to the following effect, namely :—

‘ I, A B, Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the                      day of                      , the High Court of Judicature at [or as the case may be] granted probate of the will [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India ;’

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 62 and 64, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

**61.** The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration; and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

**62.** Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English, or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or in the cases mentioned in sections 24, 25, and 26, a copy, draft, or statement of the contents thereof annexed, and stating—

Conclusiveness of application for probate or administration, if properly made and verified.

Petition for probate.

the time of the testator's death ;

that the writing annexed is his last will and testament, or as the case may be ;

that it was duly executed ;

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,—

when the application is to the District Judge, that the deceased, at the time of his death, had a fixed place of abode, or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate.

“ When the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.”\*

**63.** In cases wherein the will, copy, or draft is written in

In what cases translation of will to be annexed to petition.

any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ;

Verification of translation by person other than Court translator.

or, if the will, copy, or draft be in any other language, then by any person competent to translate the same : in which case such translation shall be verified by that person in the following manner :—

“ I, *A B*, do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

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\* This para. has been added by Act VIII. of 1903.

**64.** Application for letters of administration shall be made by petition distinctly written as aforesaid, stating—

Petition for letters of administration.  
 the time and place of the deceased's death,  
 the family or other relatives of the deceased, and their respective residences,  
 the right in which the petitioner claims,  
 the amount of assest which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further, state,—

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased, at the time of his death, had a fixed place of abode within the jurisdiction of such Delegate.

“ When the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province, and the District Judges within whose jurisdiction such assets are situate.”\*

**65.** Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 64, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the esame estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

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\* This para. has been added by Act VIII. of 1903.

**66.** The petition for probate or letters of administration shall, in all cases, be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner, or to the like effect:—

“I, *A B*, the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

**67.** Where the application is for probate, or for letters of administration, with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner, or to the effect, following:

“I, *C D*, one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (*or mark*) thereto (*as the case may be*) (*or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence*).”

**68.** If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law\* for the time being in force for the punishment of giving or fabricating false evidence.

**69.** In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

\* See the Indian Penal Code (Act XLV. of 1860), Ch. XI.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

"Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation."\*

**70.** Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

**71.** The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of *A B*, late of , deceased, who died on the day of at , without notice to *C D*, of ."

**72.** No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate until after notice to caveator. After entry of caveat no proceeding taken on petition until after notice to caveator. to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered, as the Court shall think reasonable.

**73.** A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court. District Delegate when not to grant probate or administration.

\* This para. has been added by Act VIII. of 1903.

*Explanation.*—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

**74.** In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

**75.** In every case in which there is contention or the District Delegate is of opinion that the probate or letters or administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

**76.** Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, \_\_\_\_\_, Judge of the district of \_\_\_\_\_  
 [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, the last will of \_\_\_\_\_ late of \_\_\_\_\_, \_\_\_\_\_

a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to \_\_\_\_\_, the executor in the said will named, *he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may, from time to time, appoint; and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may, from time to time, appoint.\**

"The \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, \_\_\_\_\_, Judge of the district of \_\_\_\_\_ [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)], hereby make known that, on the \_\_\_\_\_ day of \_\_\_\_\_, letters of administration (with or without the will annexed, *as the case may be*) of the property and credits of \_\_\_\_\_, late of \_\_\_\_\_, deceased, were granted to \_\_\_\_\_, the father (or *as the case may be*) of the deceased, *he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time, appoint; and also to render to this Court a true*

\* The italicized words ending s. 76 have been substituted for the words, "he having undertaken to administer the same and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date," by the Probate and Administration Act (VI. of 1886), s. 12.

The \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is

**79.** The Court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and providing that the money received

Time before which probate  
or administration shall not  
be granted.

Filing of original wills of which probate or administration, with will annexed, granted.

\* The italicized words ending s. 77 have been substituted for the words "he having undertaken to administer the same and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date," by the Probate and Administration Act (VI. of 1889), s. 13.



shall make regulations for the preservation and inspection of the will so filed as aforesaid.\*

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is Procedure in contentious cases, the proceedings† shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,‡ in which the petitioner for a probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ;

and the executor or administrator, who shall have acted under any such revoked probate or administration, may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies,§ be in the discretion Power to refuse letters of administration.

\* For rules made by the Chief Commissioner (now Lieutenant-Governor) of Burma, see Burma Rules Manual, Ed. 1897, p. 18.

† The word "proceedings" has been substituted for the word "proceeding" by the Repealing and Amending Act (XII. of 1891).

‡ See now Act V. of 1908.

§ The Hindu Wills Act (XXI. of 1870) applies to the Wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the Towns of Madras and Bombay.

**92.** When there are several executors or administrators, the Powers of several executors or administrators exercisable by one. powers of all may, in the absence of any direction to the contrary in the will or grant or letters of administration, be exercised by any one of them who has proved the will or taken out administration.

*Illustrations.*

(a.) One of several executors has power to release a debt due to the deceased

(b.) One has power to surrender a lease.

(c.) One has power to sell the property of the deceased, moveable or immoveable.

(d.) One has power to assent to a legacy.

(e.) One has power to endorse a promissory note payable to the deceased.

(f.) The will appoints A, B, C, and D, to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

**93.** Upon the death of one or more of several executors or administrators, all the powers of the death of one of several executors or administrators. office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

**94.** The administrator of effects unadministered has, with Powers of administrator of effects unadministered. respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

**95.** An administrator during minority has all the powers of an ordinary administrator.

**96.** When probate or letters of administration shall have been granted to a married woman, she Powers of married executrix or administratrix. has all the powers of an ordinary executor or administrator.

## CHAPTER VII.

## OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.\*

**97.** It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition if he has left property sufficient for the purpose.

**98.† (1)** An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may, from time to time, appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and shall, in like manner, within one year from the grant, or within such further time as the said Court may, from time to time, appoint, exhibit an account of the estate, showing the assets which have come to his hands, and the manner in which they have been applied or disposed of.

(2) The High Court may, from time to time, prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

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\* Compare Act X. of 1865, Pt. XXXIV., as amended by Act XIII. of 1875.

† This section has been substituted for the original s. 98 by the Probate and Administration Act (VI. of 1889), s. 15.

*Illustration.*

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum, Rupees 333-5-4 are to be paid to B, and Rupees 666-10-8 to C.

**111.** For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

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## CHAPTER VIII.

### OF THE EXECUTOR'S ASSENT TO A LEGACY.\*

Assent necessary to complete legatee's title.

**112.** The assent of the executor is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(a.) A, by his will, bequeaths to B his Government Paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A, by his will, has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

**113.** The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

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\* Compare Act X. of 1865, Pt. XXXV. The provisions in Ch. VIII. as to an executor apply also to an administrator with the will annexed.—See s. 140, *infra*.

*Illustrations.*

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

*Illustrations.*

(a.) A bequeaths to B his lands of Sultanpur, which, at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent shall be implied if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not referable to his character of executor.

*Illustration.*

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

**124.** Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy, if it shall become due.

**125.** Where the testator has bequeathed the residue of his estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not, at the time of his death, invested in securities of the specified kind, shall be converted into money, and invested in such securities.

**126.** Such conversion and investment as are contemplated by the last-preceding section shall be made at such times, and in such manner, as the executor, in his discretion, thinks fit ;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be completed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

**127.** Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration, with the will annexed, were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

## CHAPTER XI.

### OF THE PRODUCE AND INTEREST OF LEGACIES.\*

**128.** The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

*Legatee's title to produce of specific legacy.*

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

#### *Illustrations.*

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor, the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

**129.** The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

*Residuary legatee's title to produce of residuary fund.*

*Exception.*—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the

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\* Compare Act X. of 1865, Pt. XXXVIII.

fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

### *Illustrations.*

(a.) The testator bequeaths the residue of his property to a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which accrued in respect of it since the testator's death goes as undisposed of.

**130.** Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

*Exceptions.*—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

**131.** Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

*Exception.*—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

**132.** The rate of interest shall be six per cent. per annum.



**133.** No interest is payable on the arrears of an annuity with-

No interest on arrears of annuity within first year after testator's death. in the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

**134.** Where a sum of money is directed to be invested to

Interest on sum to be invested to produce annuity. produce an annuity, interest is payable on it from the death of the testator.

## CHAPTER XII.

### OF THE REFUNDING OF LEGACIES.\*

**135.** An executor who has paid a legacy under the order of

Refund of legacy paid under Judge's orders. a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

**136.** When an executor has voluntarily paid a legacy, he

No refund if paid voluntarily. cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

**137.** When the time prescribed by the will for the perform-

Refund when legacy becomes due on performance of condition within further time allowed. ance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be

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\* Compare Act X. of 1865, Pt. XXXIX. The provisions in Ch. XII. as to an executor apply also to an administrator with the will annexed.—See s. 148, *infra*.

performed within the time specified, unless the performance of it be prevented by fraud: in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

**138.** When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

**139.\*** Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets to, or any part thereof in discharge of, such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

**140.\*** A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies and whether the payment of the legacy by the executor was voluntary or not.

**141.** If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last-preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although

\* For limitation of suits to compel a refund under ss. 139 and 140, see the Indian Limitation Act (XV. of 1877), Sch. II., No. 43.

the assets have subsequently become deficient by the wasting of the executor.

**142.** If the assets were not sufficient to satisfy all the legacies

When unsatisfied legatee at the time of the testator's death, a must first proceed against legatee who has not received payment executor, if solvent.

of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor, if he is solvent; but, if the executor is insolvent, or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

**143.** The refunding of one legatee to another shall not ex-

Limit to refunding of one legatee to another. cceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

#### *Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

**144.** The refunding shall in all cases be without interest.

**145.** The surplus or residue of the deceased's property, after

Residue after usual payments to be paid to residuary legatee. payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

**145A.\*** Where a person not having his domicile in British

Transfer of assets from British India to executor or administrator in country of domicile for distribution. India has died, leaving assets both in British India, and, in the country in which he had his domicile at the time of his death, and there have been a grant

of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139, and after

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\* S. 145A has been inserted by the Probate and Administration Act (II. of 1890), s. 16.

having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India, who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

## CHAPTER XIII.

### OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.\*

**146.** When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

*Liability of executor or administrator for devastation.*

#### *Illustrations.*

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c.) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

**147.** When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

*For neglect to get in any part of property.*

#### *Illustrations.*

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits,† and the debt is thereby, lost to the estate. The executor is liable to make good the amount of the debt.

\* Compare Act X. of 1865, Pt. XL.

† See Act XV. of 1877, now Act IX. of 1908.

## CHAPTER XIV.

## MISCELLANEOUS.

**148.** In Chapters VIII., IX., X., and XII. of this Act, the

Provisions applied to administrator with will annexed.

provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

**149.** Nothing herein contained shall—

(a) validate any testamentary dispositions which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties, and privileges of the Administrator-General of Bengal, Madras, or Bombay.\*

**150.** No proceedings to obtain probate of a will or letters of

Probate and administration in case of persons exempted from Succession Act to be granted only under this Act.

administration to the estate of any Hindu, Muhammadan, Buddhist, or persons exempted under section 332 of the Indian Succession Act, 1865,† shall be instituted in any Court in British India except under this Act.

**151.** [*Repeal of portions of Act XXVII. of 1860.*] *Repealed by the Succession Certificate Act (VII. of 1889.)*

**152.** The grant of probate or letters of administration under this Act, in respect of any property, shall

Grant of probate or administration to supersede certificate under Act XXVII. of 1860 or Bombay Regulation VIII. of 1827.

be deemed to supersede any certificate previously granted in respect of the same property under‡ Act No. XXVII. of 1860,§ or Bombay Regulation No. VIII.

of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such

\* See Act II. of 1874.

† Act X. of 1865.

‡ Here the words "the said," being repealed by the Repealing and Amending Act (XII. of 1891), have been omitted.

§ Act XXVII. of 1860 has been repealed by the Succession Certificate Act (VII. of 1889) ; but see saving in s. 2 of the latter Act.

certificate regarding such property is pending, the persons to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

**153.** [*Amendment of Court Fees Act (VII. of 1870.)*] *Repealed by the Succession Certificate Act (VII. of 1889).*

Amendment of Hindu Wills Act, 1870.

**154.** The following amendments shall be made in the Hindu Wills Act, 1870\* (namely) :—

(a.) For the portion of section 2 commencing with the words "section 179," and ending with the words, "administrator with the will annexed," the words, "and section 187," shall be substituted.

(b.) The third clause of section 3 and the last clause of section 6 shall be repealed.

(c.) In section 6, for the words "one hundred and three and one hundred and eighty-two," the words "and one hundred and three," shall be substituted.

**155.** All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan, or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865,† which, before this Act comes into force, have been made in British Burma,‡ shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

**156.** [*Amendment of Limitation Act, 1877.*] *Repealed by Act IX. of 1908.*

\* See Act XXI. of 1870.

† Act X. of 1865.

‡ Read now "Lower Burma." See the Upper Burma Laws Act (XX. of 1886), s. 4.

**157.\*** (1) When a grant of probate or letters of administration is revoked or annulled under this

Surrender of revoked probate or letters of administration.

Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully, and without sufficient cause, omits to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

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\* S. 157 has been added by the Probate and Administration Act (VI. of 1889), s. 17.

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THE SCHEDULE.

ENACTMENTS REPEALED.

# THE PROVINCIAL INSOLVENCY ACT, 1907. (Act No. III. of 1907).

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received His Excellency's Assent on the 15th March, 1907.*

*An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having Jurisdiction outside the Presidency-towns and the Town of Rangoon.*

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in British India as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon; It is hereby enacted as follows:—

Short title, extent, and commencement.

1. (1) This Act may be called the Provincial Insolvency Act, 1907:

(2) It extends to the whole of British India except the Scheduled Districts: and

(3) It shall come into force on the first day of January 1908.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "available act of insolvency" means any act of insolvency available for an insolvency-petition at the date of the presentation of the petition on which the order of adjudication is made:

(b) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor:

(c) "District Court" means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns, and of the Town of Rangoon:

(d) "prescribed" means prescribed by rules made under this Act:

- (e) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit :
- (f) "secured creditor" includes a landlord who, under any enactment for the time being in force, has a charge on land for the rent of that land ; and
- (g) "the Court" means the Court exercising jurisdiction under this Act.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure\* shall have the same meanings as those respectively assigned to them in the said Code.\*

Insolvency-jurisdiction.

3. (1) The District Courts shall be the Courts having jurisdiction under this Act :

Provided that the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Act.

(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of insolvency.

4. A debtor commits an act of insolvency in each of the following cases, namely—

- (a) if, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property, or of any part thereof, with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property, or of any part thereof, or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;

(d) if, with intent to defeat or delay his creditors,—

(i) he departs or remains out of British India,

(ii) he departs from his dwelling-house or usual place of business, or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(e) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(f) if he petitions to be adjudged as insolvent under the provisions of this Act;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(h) if he is imprisoned in execution of the decree of any Court for the payment of money.

*Explanation.*—For the purposes of this section, the act of an agent may be the act of the principal.

**5.** Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency-petition may be presented, either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

*Explanation.*—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and, on such petition, the Court may make an order of adjudication.

**6.** (1) Every insolvency-petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure\* for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency-petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works

for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency-petition unless—

- (a) his debts amount to five hundred rupees; or
- (b) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money; or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency-petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately, or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall, in his petition, either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency-petition shall be presented against any corporation, or against any association or company, registered under any enactment for the time being in force.

**7.** No petition, whether presented by a debtor, or by a creditor, shall be withdrawn without the leave of the Court.

Withdrawal of petitions.

**8.** Where two or more insolvency-petitions are presented against the same debtor, or where separate petitions are presented against

Consolidation of petitions.

joint debtors, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

9. Where the petitioner does not proceed with due diligence

Power to charge carriage on his petition, the Court may substitute of proceedings. as petitioner any other creditor to whom

the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

10. If a debtor, by or against whom an insolvency-petition has

Continuance of proceedings been presented, dies, the proceedings on death of debtor. in the matter shall, unless the Court

otherwise orders, be continued as if he were alive.

11. (1) Every insolvency-petition presented by a debtor

Contents of petition. shall contain the following particulars, namely—

- (a) a statement that the debtor is unable to pay his debts ;
- (b) the place where he ordinarily resides or carries on business, or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made :
- (d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors, so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by, him ;
- (e) the amount and particulars of all his property, together with—
  - (i) a specification of the value of all such property not consisting of money ;
  - (ii) the place or places at which any such property is to be found ; and
  - (iii) a declaration of his willingness to place at the disposal of the Court all such property save in so

far as it includes such particulars (not being his books of account) as are exempted, by the Code of Civil Procedure,\* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree.

(2) Every insolvency-petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-section (1), and shall also specify—

(a) the act of insolvency committed by such debtor, together with the date of its commission; and

(b) the amount and particulars of his or their pecuniary claim or claims against such debtor.

**12. (1)** Where an insolvency-petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the local official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

**13.** At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion, or on the application of any creditor, make one or more of the following orders, namely—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,

(2) order the appointment of an interim receiver of the property of the debtor, or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession, or under the control, of the debtor, other than such particulars (not being his books of account) as are exempted,

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\* Act V. of 1908.



by the Code of Civil Procedure,\* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree,

- (4) order a warrant to issue, with or without bail for the arrest of the debtor, and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2), clause (3), or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors, or to avoid any process of the Court,—

- (i) has absconded or has departed from the local limits of the jurisdiction of the Court, or is about to abscond or to depart from such limits, or is remaining outside them, or
- (ii) has failed to disclose, or has concealed, destroyed, transferred, or removed from such limits, or is about to conceal, destroy, transfer, or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

Procedure at hearing.

- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition,
- (b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and
- (c) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

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\* Act V. of 1908.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor, or to any creditor, to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge, and shall form part of the record of the case.

**15. (1)** Where the Court is not satisfied with the proof of the right to present the petition, or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that, for any other sufficient cause, no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1), and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon, and such amount may be realized as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

**16. (1)** Where a petition is not dismissed under the preceding section, and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(a) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted, by the Code of Civil Procedure,\* or by any other enactment for the time being in force, from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and

\* Act XIV. of 1882.

(b) the insolvent, if in prison for debt, shall be released ;

and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall, during the pendency of the insolvency-proceedings, have any remedy against the property or person of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court, and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (a), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order, or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by, or devolve on, the insolvent after the date of an order of adjudication, and before his discharge, shall forthwith vest in the Court or receiver, and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (a).

(5) Nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address, and description of the insolvent, the date of the adjudication, and the Court by which the adjudication is made, shall be published in the local official Gazette, and in such other manner as may be prescribed.

**17.** If, in any case in which an order of adjudication has been made, it shall be proved to the Court by which such order was made that insolvency-proceedings are pending in another Court against the same debtor, and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication, and stay all proceedings, or dismiss the petition on such terms (if any) as the Court thinks fit.

**18. (1)** The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

**(2)** Subject to such conditions as may be prescribed, the Court may—

(a) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and,

(b) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

**(3)** Where the Court appoints a receiver, it may remove the person, in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorize the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

**(4)** Where a receiver appointed under this section—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the balance due from him thereon as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

**19. (1)** The Local Government may appoint such persons as it thinks fit (to be called "Official Receivers.") to be receivers under this Act within such local limits as it may prescribe.

**(2)** Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court unless the Court, for special reasons, otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (b), in respect of the services of an Official Receiver, shall be credited to such fund as the Local Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

20. Subject to the provisions of this Act the receiver shall, with Duties and powers of receiver. all convenient speed, realize the property of the debtor, and distribute dividends among the creditors entitled thereto, and for that purpose may—

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same ;

(d) institute, defend, or continue any suit or other legal proceeding relating to the property of the insolvent ;

(e) employ a pleader or other agent to take any proceedings, or do any business, which may be sanctioned by the Court ;

(f) accept, as the consideration for the sale of any property of the insolvent, a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit ;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(h) refer any dispute to arbitration, and compromise all debts, claims, and liabilities, on such terms as may be agreed upon ;

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

**21. (1)** In any local area in which a declaration has been made under section 320\* of the Code of Civil Procedure, and is in force, no sale of immoveable property paying revenue to the Government, or held or let for agricultural purposes, shall be made by the receiver; but, after the other property of the insolvent has been realized, the Court shall ascertain—

(a) the amount required to satisfy the debts proved under this Act after deducting the moneys already received,

(b) the immoveable property of the insolvent remaining unsold, and

(c) the incumbrances (if any) existing thereon,

and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325† of the said Code as he thinks fit, and subject to the provisions of those sections, so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

**22.** If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order of decision complained of.

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\* This reference to s. 320 of Act XIV. of 1882 (the old and now repealed Code) should now mean to apply to ss. 68, 70, and 71 of Act V. of 1908 (the new Code repealing the former *in toto*.)

† Instead of these sections (322-25) of the old Code of Civil Procedure, Act XIV. of 1882 (which has entirely been repealed and replaced by the new Code, Act V. of 1908), see now the Third Schedule of the Act last mentioned.

**23.** Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act.

Powers of Court if no receiver appointed.

**24. (1)** All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts respectively, and shall frame a schedule of such persons and debts:

Schedule of creditors.

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court make an order to that effect, and thereupon the debt shall not be included in the schedule.

**(2)** A copy of every such schedule shall be posted in the Court-house.

**(3)** Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt, and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and, hearing their objections (if any), shall comply with or reject the application.

**25. (1)** A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court, an affidavit verifying the debt.

Mode of proof.

**(2)** The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

**26. (1)** Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver, and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry, or reduce the amount of the debt.

Disallowance and reduction of entries in schedule.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

**27.** (1) Where a debtor, whether before or after the making of an order or adjudication, submits a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal, and shall issue a notice to all creditors by publication in the local official Gazette, and in such other manner as may be prescribed.

(2) If, on the consideration of the proposal, a majority in number, and three-fourths in value, of all the creditors whose debts are proved, and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may, at the meeting, amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved, on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case, the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled, and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.



(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent, and annul the composition or scheme, but without prejudice to the validity or any transfer or payment duly made, or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this subsection, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment, in priority to other debts, of all debts directed to be so paid in the distribution of the property of an insolvent.

**28.** (1) Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Act.

**29.** A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest, at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

**30.** Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other

party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

**31.** (1) Where a secured creditor realizes his security, he may  
 Secured creditors. prove for the balance due to him after deducting the net amount realized.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realize or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may, at any time before realisation, redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realizes it, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

**32.** (1) On any debt or sum certain whereon interest is not  
 Interest. reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

*Priority of debts.*

**33.** (1) In the distribution of the property of the insolvent, there shall be paid in priority to all other debts—

- (a) all debts due to the Crown or to any local authority; and
- (b) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant, or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners, the partnership-property shall be applicable in the first instance in payment of the partnership-debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership-property; and, where there is a surplus of the partnership-property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership-property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively, and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

**46.** (1) Any person aggrieved by an order made in the exercise of insolvency-jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Appeals. Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order which respect thereto as it thinks fit.

(2) Any person aggrieved by an order made by the District Court under section 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44, otherwise than in appeal from an order made by a subordinate Court, may appeal to the High Court.

(3) Any person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court, or of the High Court.

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively.

**47.** (1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers, and shall follow the same procedure, as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers, and shall follow the same procedure, as they respectively have and follow in regard to civil suits.

**48.** When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(a) the estate shall, where practicable, be distributed in a single dividend,



9. A Judge or Additional Judge of a Court of Small Causes may be suspended or removed from office by the Local Government.

10. The Local Government, after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes, or a Judge and an Additional Judge of a Court of Small Causes, shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last-foregoing section, differ as to a question of law or usage having the force of law, or in construing a document, the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case, and of the point on which they differ in opinion, and the provisions of Chapter XLVI.\* of the Code of Civil Procedure shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

12. (1) The Local Government may appoint to a Court of Small Causes an officer to be called the Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The Local Government may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the

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\* This reference to Ch. XLVI. of Act XIV. of 1882 (the Code of Civil Procedure in force when this Act became law, but now repealed) should now be taken as made to Order No. XLVI., together with ss. 113 and 115, of Act V. of 1908 (the Code now in force repealing the former *in toto*).—See s. 158 of the latter Act.

Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may be suspended or removed from office by the Local Government.

**13.** Subject to any enactment for the time being in force, and to any orders made by the Local Government in this behalf, the law or practice for the time being applicable to the appointment, punishment, and transfer of ministerial officers of a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which a Court of Small Causes is established shall, so far as it can be made applicable, apply to the appointment, punishment, and transfer of ministerial officers of the Court of Small Causes other than the Registrar (if any) of that Court.

**14.** (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act and with any other enactment for the time being in force, conferring and imposing, on the ministerial officers of a Court of Small Causes, such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

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### CHAPTER III.

#### JURISDICTION OF COURTS OF SMALL CAUSES.

**15.** (1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule, and to the provisions of any enactment for the time being in force, all

suits of a civil nature, of which the value does not exceed five hundred rupees, shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the Local Government may, by order in writing, direct that all suits of a civil nature, of which the value does not exceed one thousand rupees, shall be cognizable by a Court of Small Causes mentioned in the order.

16. Save as expressly provided by this Act, or by any other

Exclusive jurisdiction of enactment for the time being in force, a Courts of Small Causes. suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

## CHAPTER IV.

### PRACTICE AND PROCEDURE.

17. (1) The procedure prescribed in the chapters and sections of the Code of Civil Procedure Application of the Code of Civil Procedure specified in the Second Schedule\* to that Code† shall, so far as those chapters and sections are applicable, be the procedure followed in a Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte*, or for a review of judgment, shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree, or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section 253‡ of the Code of Civil Procedure.

\* This reference to the Second Schedule of the old and now repealed Code (Act XIV. of 1882) should now be taken as made to s. 7 and Order L. of the present Code (Act V. of 1908) now repealing the former.—See s. 158 of the latter.

† Here the words, "as amended by this Act," being repealed by Act XII. of 1891, have been omitted.

‡ That is, s. 253 of Act XIV. of 1882 (the old Code), which should now mean s. 52 of Act V. of 1908 (the new Code).—See s. 158 of the latter Act.



**18. (1)** Suits cognizable by the Registrar under section 12 sub-sections (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge, if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

**19. (1)** When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, the Registrar may admit a complaint, or return or reject a complaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a complaint which has been admitted by the Registrar, or admit a complaint which has been returned or rejected by him :

Provided that, where a party applies for the return or rejection or the admission of a complaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted or returned or rejected the complaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

**20. (1)** If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar, and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed, or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds, and in the same manner, as if the decree had been passed by himself.

- (a) keep such registers, books, and accounts as the High Court from time to time prescribes, and
- (b) comply with such requisitions as may be made by the District Court, the High Court, or the Local Government, for records, returns, and statements, in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes with respect to administrative control shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the Local Government in which the Court of Small Causes is established,

**29.** A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Local Government.

Abolition of Courts of Small Causes.

**30.** The Local Government may, by order in writing, abolish a Court of Small Causes.

**31.** (1) Nothing in this Act shall be construed to prevent the Local Government from appointing a person, who is a Judge or Additional Judge of a Court of Small Causes, to be also a Judge of any other Civil Court, or to be a Magistrate of any class, or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the Local Government may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application of Act to Courts invested with jurisdiction of Court of Small Causes.

**32.** (1) So much of Chapters III. and IV. as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,

- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and
- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested, by or under any enactment for the time being in force, with the jurisdiction of a Court of Small Causes, so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1), with respect to Courts invested with the jurisdiction of a Court of Small Causes, applies to suits instituted, or proceedings commenced, in those Courts before the date on which they were invested with that jurisdiction.

**33.** A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure,\* be deemed to be different Courts.

Modification of Code as so applied.

**34.** Notwithstanding anything in the last two foregoing sections,—

- (a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or
- (b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

the documents mentioned in section 224† of the Code of Civil Procedure shall not be sent with the decree unless, in any case, the Court, by order in writing, requires them to be sent.

\* Act V. of 1908.

† Should now be taken as referring to rule 6, Order XXI. of Act V. of 1908 (the Code now in force).—See s. 158 of that Act.

**35. (1)** Where a Court of Small Causes or a Court invested with the jurisdiction of a Court of abolished Courts. Continuance of proceedings Small Causes has, from any cause, ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure\* as extended to Courts of Small Causes, or in any other enactment for the time being in force.

**36.** [*Amendment of Indian Limitation Act, 1877.—Repealed by Act IX. of 1908 (the Indian Limitation Act, 1908).*]

**37.** All orders required by this Act to be made in writing by the Local Government shall be published in the official Gazette.  
Publication of certain orders.

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## THE FIRST SCHEDULE:

### ENACTMENTS REPEALED.

[*Repealed by Act XII. of 1891.*]

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## THE SECOND SCHEDULE:

### SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(*See section 15.*)

(1) A suit concerning an act or order purporting to be done or made by the Governor-General in Council or a Local Government, or by the Governor-General or a Governor or by a Member of the Council of the Governor-General, or of the Governor of Madras or Bombay, in his official capacity, or concerning an act purporting to be done by any person by order of the Governor-General in Council or a Local Government;

(2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court, or of a judicial officer acting in the execution of his office;

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\* Act V. of 1908.

(3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards, in the execution of his office ;

(4) a suit for the possession of immoveable property, or for the recovery of an interest in such property ;

(5) a suit for the partition of immoveable property ;

(6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage, or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage ;

(7) a suit for the assessment, enhancement, abatement, or apportionment of the rent of immoveable property ;

(8) a suit for the recovery of rent other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto ;

(9) a suit concerning the liability of land to be assessed to land-revenue ;

(10) a suit to restrain waste :

(11) a suit for the determination or enforcement of any other right to, or interest in, immoveable property ;

(12) a suit for the possession of an hereditary office, or of an interest in such an office, including a suit to establish an exclusive or periodically-recurring right to discharge the functions of an office ;

(13) a suit to enforce payment of the allowance or fees respectively called *malikana* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property, or in an hereditary office, or in a shrine or other religious institution ;

(14) a suit to recover, from a person to whom compensation has been paid under the Land Acquisition Act, 1894,\* the whole or any part of the compensation ;

(15) a suit for the specific performance or rescission of a contract ;

(16) a suit for the rectification or cancellation of an instrument ;

(17) a suit to obtain an injunction ;

(18) a suit relating to a trust, including a suit to make good, out of the general estate of a deceased trustee, the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce, against the estate of a deceased trustee, a claim for contribution ;

(19) a suit for a declaratory decree, not being a suit instituted under section 283 or section 332† of the Code of Civil Procedure ;

\* The reference to Act X. of 1870 has been altered in accordance with Act I. of 1894, s. 2 (3).

† For "section 283 or section 332" read "rule 63 or rules 100, 101 & 103 of Order XXI."—See s. 158 of Act V. of 1908 (the new Code).

(20) a suit instituted under section 293\* or section 332\* of the Code of Civil Procedure;

(21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease, or other transfer by a Court or a revenue-authority, or by a guardian;

(22) a suit for property which the plaintiff has conveyed while insane;

(23) a suit to alter or set aside a decision, decree, or order of a Court, or of a person acting in a judicial capacity;

(24) a suit to contest an award;

(25) a suit upon a foreign judgment as defined in the Code of Civil Procedure,† or upon a judgment obtained in British India;

(26) a suit to compel a refund of assets improperly distributed under section 295\* of the Code of Civil Procedure;

(27) a suit under the Indian Succession Act, 1865,‡ section 320 or section 321, or under the Probate and Administration Act, 1881,§ section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy, or distributed assets;

(28) a suit for a legacy, or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

(29) a suit—

(a) for a dissolution of partnership, or for the winding-up of the business of a partnership after its dissolution;

(b) for an account of partnership-transactions; or

(c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;

(30) a suit for an account of property, and for its due administration under decree;

(31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant;

(32) a suit for a general average loss, or for salvage;

(33) a suit for compensation in respect of collision between ships;

\* These sections (of Act XIV. of 1882, the old Code now repealed) should now be taken as applying respectively to rule 63 and rules 100, 101, 103 of Order XXI. and s. 73 of Act V. of 1908 (the new Code).—See s. 158 of the latter Act.

† Act V. of 1908.

‡ Act X. of 1865.

§ Act V. of 1881.

(34) a suit on a policy of insurance, or for the recovery of any premium paid under any such policy ;

(35) a suit for compensation—

(a) for loss occasioned by the death of a person caused by actionable wrong ;

(b) for wrongful arrest, restraint, or confinement ;

(c) for malicious prosecution ;

(d) for libel ;

(e) for slander ;

(f) for adultery or seduction ;

(g) for breach of contract of betrothal or promise of marriage ;

(h) for inducing a person to break a contract made with the plaintiff ;

(i) for obstruction of an easement or diversion of a watercourse ;

(j) for illegal, improper, or excessive distress or attachment ;

(k) for improper arrest under Chapter XXXIV.\* of the Code of Civil Procedure, or in respect of the issue of an injunction wrongfully obtained under Chapter XXXV.\* of that Code ; or

(l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause ;

(36) a suit by a Mahomedan for exigible (*mu'ajjal*) or deferred (*muwajjal*) dower ;

(37) a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce ;

(38) a suit relating to maintenance ;

(39) a suit for arrears of land-revenue, village-expenses, or other sums payable to the representative of a village community, or to his heir or other successor in title ;

(40) a suit for profits payable by the representative of a village-community, or by his heir or other successor in title, after payment of land-revenue, village-expenses, and other sums ;

(41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer or by a manager of joint property, or a member of an undivided family, in respect of a payment made by him on account of the property or family ;

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\* Chapter XXXIV. & XXXV. of Act XIV. of 1882 correspond to Order XXXVIII. (excluding rule 7 and including s. 95) and Order XXXIX. (including s. 95), respectively, of Act V. of 1908 (the new Code), to which the reference to the Chapters aforesaid now be taken to apply.—See s. 158 of the latter Act.

## PROVINCIAL SMALL CAUSE COURTS. [Act IX. of 1887.]

(42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;

(43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue, or of a demand recoverable as an arrear of land-revenue ;

(44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.



THE  
INDIAN REGISTRATION ACT, 1908  
ACT No. XVI. of 1908.

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THE SCHEDULE—REPEAL OF  
ENACTMENTS.

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# THE INDIAN REGISTRATION ACT, 1908: ACT NO. XVI. OF 1908.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

[Received His Excellency's Assent on the 18th December 1908.]

*An Act to consolidate the Enactments relating to the Registration of Documents.*

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ; It is hereby enacted as follows :—

## PART I.

### PRELIMINARY.

Short title, extent, and commencement.

1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor-General in Council, exclude from its operation.

(3) It shall come into force on the first day of January 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) " addition " means the place of residence, and the profession, trade, rank, and title (if any) of a person described, and, in the case of a Native of India, his caste (if any) and his father's name, or, where he is usually described as the son of his mother, then his mother's name :

(2) " book " includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) " district " and " sub-district," respectively, mean a district and sub-district formed under this Act :

(4) " District Court " includes the High Court in its ordinary original civil jurisdiction :

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act:

(6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops, nor grass:

(7) "lease" includes a counterpart, kabuliat, an undertaking to cultivate or occupy, and an agreement to lease:

(8) "minor" means a person who, according to the personal law to which he is subject, has not attained majority:

(9) "moveable property" includes standing timber, growing crops, and grass, fruit upon, and juice in, trees, and property of every other description except immoveable property: and

(10) "representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

## PART II.

### OF THE REGISTRATION-ESTABLISHMENT.

3. (1) The Local Government shall appoint an officer to be Inspector-General of Registration. the Inspector-General of Registration for the territories subject to such Government:

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under Government.

4. (1) The Governor of Bombay in Council may also, with the previous consent of the Governor-General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

(2) The Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5. (1) For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe and may alter the limits of such districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is herein mentioned.

6. The Local Government may appoint such persons, whether Registrars and Sub-Registrars, public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar, and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorisation shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

8. (1) The Local Government may also appoint officers to be called Inspectors of Registration-offices, and may prescribe the duties of such officers.

(2) Every such Inspector shall be subordinate to the Inspector-General.

**9.** Every military cantonment may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and the Cantonment Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

**10. (1)** When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court, within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

**11.** When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

**12.** When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Report of certain appointments and suspension and removal and dismissal of officers.

**13. (1)** All appointments made under section 10, section 11, or section 12 shall be reported to the Local Government by the Inspector-General.

(2) Such report shall be either special or general as the Local Government directs.

(3) The Local Government may suspend, remove, or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.



14. (1) Subject to the approval of the Governor-General in Council, the Local Government may assign such salaries as such Government officers appointed under this Act, or provide for their remuneration by fees, or partly by fees, and partly by salaries.

(2) The Local Government may allow proper establishments for the several offices under this Act.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English, and in such other language as the Local Government directs: "The seal of the Registrar (or Sub-registrar) of ."

16. (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

(3) The Local Government shall supply the office of every Registrar with a fire-proof box, and shall, in each district, make suitable provision for the safe custody of the records connected with the registration of documents in such district.

### PART III.

#### OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI. of 1864 or the Indian Registration Act, 1866,\* or the Indian Registration Act, 1871,† or the Indian Registration Act, 1877,‡ or this Act came or comes into force, namely—

\* Act XX. of 1866.

† Act VII. of 1871.

‡ Act III. of 1877.

- (a) instruments of gift of immoveable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest; and
- (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent:

Provided that the Local Government may, by order published in the local official gazette, exempt from the operation of this sub-section any leases executed in any district or part of a district, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any composition-deed; or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist, in whole or in part, of immoveable property; or
- (iii) any debenture issued by any such Company, and not creating, declaring, assigning, limiting, or extinguishing any right, title, or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed, or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon, or transfer of, any debenture issued by any such Company; or
- (v) any document not itself creating, declaring, assigning, limiting, or extinguishing any right, title, or interest of the value of one hundred rupees and upwards to or

in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit, or extinguish any such right, title, or interest; or

- (vi) any decree or order of a Court, and any award; or
- (vii) any grant of immoveable property by Government; or
- (viii) any instrument of partition made by a Revenue-officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871,\* or the Land Improvement Loans Act, 1883,† or
- (x) any order granting a loan under the Agriculturists' Loans Act, 1884,‡ or instrument for securing the repayment of a loan made under that Act; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

(3) Authorities to adopt a son, executed after the first day of January 1872, and not conferred by a will, shall also be registered.

Documents of which registration is optional.

18. Any of the following documents may be registered under this Act, namely—

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

\* Act XXVI. of 1871.

† Act XIX. of 1883.

‡ Act XII. of 1884.

- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest ;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;
- (d) instruments (other than wills), which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property ;
- (e) wills ; and
- (f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

20. (1) The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are

situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

**22.** (1) Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and land as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

## PART IV.

### OF THE TIME OF PRESENTATION.

**23.** Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the date on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

**24.** Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17;
- (d) instruments (other than wills), which purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest to or in moveable property;
- (e) wills; and
- (f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district, and also by a true copy.

20. (1) The registering officer may, in his discretion, refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure, or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure, or alteration.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are

situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

**22. (1)** Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and land as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

## PART IV.

### OF THE TIME OF PRESENTATION.

**23.** Subject to the provisions contained in sections 24, 25, and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the date on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

**24.** Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

**25.** (1) If, owing to urgent necessity or unavoidable accident, Provision where delay in any document executed, or copy of a presentation is unavoidable. decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

**26.** When a document purporting to have been executed by Documents executed out of all or any of the parties out of British India. India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied,—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Wills may be presented or deposited at any time.

**27.** A will may at any time be presented for registration or deposited in manner hereinafter provided.

## PART V.

### OF THE PLACE OF REGISTRATION.

**28.** Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), Place for registering documents relating to land. clauses (a), (b), (c), and (d), and section 18, clauses (a), (b), and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

**29.** (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration, Place for registering other documents.



either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (1) Any Registrar may, in his discretion, receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit :

Registration or acceptance  
for deposit at private residence.

Provided that such officer may, on special cause being shown, attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

## PART VI.

### OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 39, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office—

Persons to present documents for registration.

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

**72.** (1) Except where the refusal is made on the ground

Appeal to Registrar from orders of Sub-Registrar refusing registration on ground other than denial of execution.

of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the

Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered, and the document is duly presented for registration within thirty days after making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

**73.** (1) When a Sub-Registrar has refused to register a document

Application to Registrar where Sub-Registrar refuses to register on ground of denial of execution.

on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document or his representative, assign, or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing, and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

**74.** In such case, and also where such denial as aforesaid is

Procedure of Registrar on such application.

made before a Registrar in respect of a document presented for registration to him, the Registrar shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed;

- (b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

**75.** (1) If the Registrar finds that the document has been executed, and that the said requirements Order by Registrar to re- gister and procedure thereon. have been complied with, he shall order the document to be registered.

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering-officer shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59, and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compell them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908.\*

Order of refusal by Registrar.

**76.** (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district, or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document under section 72 or section 75,

shall make an order of refusal, and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

**77.** (1) Where the Registrar refuses to order the document to be registered under section 72 or section 76, any person claiming under  
Suit in case of order of refusal by Registrar.

such document, or his representative, assign, or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis* apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

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### PRAT XIII.

#### OF THE FEES FOR REGISTRATION, SEARCHES, AND COPIES.

78. Subject to the approval of the Governor-General in Fees to be fixed by Local Council, the Local Government shall Government. prepare a table of fees payable—

- (a) for the registration of documents ;
- (b) for searching the registers ;
- (c) for making or granting copies of reasons, entries, or documents before, on, or after registration ;

and of extra or additional fees payable—

- (d) for every registration under section 30 ;
- (e) for the issue of commissions ;
- (f) for filing translations ;
- (g) for attending at private residences ;
- (h) for the safe custody and return of documents ; and
- (i) for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

79. A table of the fees so payable shall be published in the official gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

**80.** All fees for the registration of documents under this Act

Fees payable on presentation.

shall be payable on the presentation of such documents.

## PART XIV.

### OF PENALTIES.

**81.** Every registering-officer appointed under this Act and

Penalty for incorrectly endorsing, copying, translating, or registering documents with intent to injure.

every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating, or registering of any document

presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code,\* to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for making false statements, delivering false copies or translations, false personation, and abetment.

**82.** Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act in any proceeding or inquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and, in such assumed character, presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act; or

(d) abets anything made punishable by this Act,

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

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\* Act XLV. of 1860.

**83.** (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar, or the Sub-Registrar, in whose territories, district, or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

**84.** (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.\*

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code,\* the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

## PART XV.

### MISCELLANEOUS

**85.** Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years may be destroyed.

Registering officer not liable for thing *bona fide* done or refused in his official capacity.

**86.** No registering officer shall be liable to any suit, claim, or demand by reason of anything in good faith done or refused in his official capacity.

**87.** Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. (1) Notwithstanding anything herein contained, it shall

Registration of documents executed by Government officers, or certain public functionaries.

not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras, or Bombay, or for any official Trustee or Official

Assignee, or for the Sheriff, Receiver, or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government, or to such officer of Government, Administrator-General, Official Trustee, Official Assignee, Sheriff, Receiver, or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883,\* shall send a

Copies of certain orders, certificates, and instruments to be sent to registering officers, and filed.

copy of his order to the registering officer within the local limits of whose

jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, situate; and such registering officer shall file the copy in his book No. 1.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908,† shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884,‡ shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mort-

\* Act XIX. of 1883.

† Act V. of 1908.

‡ Act XII. of 1884.

gaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his book No. 1.

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering-officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

*Exemptions from Act.*

90. (1) Nothing contained in this Act, or in the Indian Registration Act, 1877,\* or in the Indian Registration Act, 1871,† or in any Act thereby repealed, shall be deemed to require, or to have at any time required, the Registration of any of the following documents or maps, namely—

- (a) documents issued, received, or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaries or other officers charged with the preparation of village-records; or
- (d) sanads, inam, title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land, or of any interest in land; or
- (e) notices given under section 74 or section 76 of the Bombay Land-revenue Code, 1879,‡ of relinquishment of occupancy by occupants, or of alienated land by holders of such land.

\* Act III. of 1877.

† Act VIII. of 1871.

‡ Bom. Act. V. of 1879.



of 1908.]

# REGISTRATION.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

91. Subject to such rules and the previous payment of such inspection and copies of fees as the Local Government prescribes such documents. in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c), and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877,\* shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

## Repeals.

93. (1) The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India, and not hereby expressly repealed.

\* Act III. of 1877.

## THE SCHEDULE :

## REPEAL OF ENACTMENTS.

*(See section 93.)*

Year.	No.	Short title.	Extent of repeal.
1877	III.	The Indian Registration Act, 1877.	The whole.
1879	XII.	The Registration and Limitation Acts Amendment Act, 1879.	So much as is unrepealed.
1883	XIX.	The Land Improvement Loans Act, 1883.	So much of section 12 as is unrepealed.
1886	VII.	The Indian Registration Act, 1886.	The whole.
1888	VII.	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed.
1891	XII.	The Amending Act, 1891 ...	In the Second Schedule, the entries relating to Act III. of 1877.
1899	XVII.	The Indian Registration Amendment Act, 1899.	The whole.





# ACT. XX. OF 1863.

## The Religious Endowments Act, 1863.\*

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1863.

*An Act to enable the Government to divest itself of the Management of Religious Endowments.*

WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX., 1810, of the Bengal Code (*for the due appropria-*

Preamble.

\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

For the Statement of Objects and Reasons of the Bill which became Act XX. of 1863, see Calcutta Gazette, 1862, p. 753; for Proceedings in Council relating to the Bill, see *ibid* Supplement, p. 28, and *ibid*, 1863, p. 105.

Act XX. of 1863 has been extended to Kanara by Bom. Act VII. of 1865 which was specially passed for that purpose.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

- (1) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum (see Gazette of India, 1881, Pt I., p. 504):
- (2) The scheduled portion of the Mirzapur District (see Gazette of India, 1879, Pt. I., p. 383):
- (3) Jaunsar Bawar (see Gazette of India, 1879 Pt I., p. 382):
- (4) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see Gazette of India, 1886, Pt. I., p. 361):
- (5) The Chief Commissionership of Assam (except the North Lushai Hills) (see Gazette of India 1897, Pt. I., p 299).

It has been extended, by notification under s. 5 of the last mentioned Act, to the following Scheduled Districts, namely:—

- (1) Kumaon and Garhwal (see Gazette of India, 1876, Pt. I., p. 606):
  - (2) The North-Western Provinces Tarai (see Gazette of India, 1876, Pt. I., p. 505):
  - (3) Ajmere and Merwara (see Gazette of India, 1877, Pt. I., p. 605)
- S. 22 applies to the whole of British India.

tion of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kulltras and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII., 1817, of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, and Colleges, or other public purposes; for the maintenance and repair of Bridges, Choultras, or Chaltrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments . . . . ;\* It is enacted as follows:—

1. [*Repeal of parts of Bengal Regulation XIX. of 1810 and Madras Regulation VII. of 1817.*] [*Repealed by the Repealing Act (XIV. of 1870).*]

Interpretation clause.

2. In this Act—

words importing the singular number shall include the plural,  
 Number. and words importing the plural number shall include the singular:

Gender. words importing the masculine gender shall include females:†

the words “Civil Court” and “Court” shall mean the principal Court of original civil jurisdiction in the district in which the mosque, temple, or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

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\* In the Preamble, the words and figures, “and whereas it is expedient for that purpose to repeal so much of Regulation XIX., 1810 of the Bengal Code, and Regulation VII., 1817, of the Madras Code, as relate to endowments for the support of mosques, Hindu temples, or other religious purposes,” have here been repealed by the Repealing Act (XVI. of 1874).

† Compare s. 13 of the General Clauses Act (X. of 1897).

3. In the case of every mosque, temple, or other religious establishment to which the provisions of Government to make special provision respecting mosques, &c. either of the Regulations specified in "the preamble to this Act" \* are applicable, and the nomination of the trustee, manager, or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager, or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall as soon as possible after the passing of this Act, make special provision as hereinafter provided.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the Transfer to trustees, &c., of trust property in charge of Revenue Board. passing of this Act, shall be under the management of any trustee, manager, or superintendent, whose nomination shall not vest in nor be exercised by, nor be subject to the confirmation of, the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager, or superintendent all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple, or other religious establishment, except such property as is hereinafter provided ;

and the powers and responsibilities of the Board of Revenue, Cessation of Board's powers as to such property. and the local agents, in respect to such mosque, temple, or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple, or religious establishment to which such property shall belong, or in the performance of the worship at

\* In s. 3 the words quoted have been substituted for the words and figure "section 1" by the Repealing and Amending Act (XII. of 1892)

of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment; and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

The manager so appointed by the Civil Court shall have and Powers of managers appointed by Court. shall exercise all the powers which, under this or any other Act, the former trustee, manager, or superintendent, in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple, or religious establishment, or the property belonging thereto.

6. The rights, powers, and responsibilities of every trustee, Rights, &c., of trustees to whom property is transferred under section 4. manager, or superintendent, to whom the land and other property of any mosque, temple, or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election, and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple, or religious establishment, and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

All the powers which might be exercised by any Board or Appointment of committees. local agent for the recovery of the rent of land or other property transferred under the said section 4 of this Act may, from the date of such transfer, be exercised by any trustee, manager, or superintendent to whom such transfer is made.

7. In all cases described in section 3 of this Act the Local Constitution and duties of committees. Government shall, once for all, appoint one or more committees in every division or district, to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents,



except in respect of any property which is specially provided for under section 21 of this Act.

8 The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.\*

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness ;

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government ;†

and whoever shall be then elected under the said rules shall be a member of the committee to fill such vacancy.

\* For rules made under this section for Madras, see p. 7 of the Madras List of Local Rules and Orders, Ed. 1894.

† For rules under this section for the N.-W. P., see the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 32.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

**11.** No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple, or other religious establishment for the management of which such committee shall have been appointed.

**12.** Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple, or religious establishment, and for the management of its affairs, the Board of Revenue, or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which, at the time of appointment, shall be under the superintendence, or in the possession, of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for;

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple, or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents, previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may, from the date of such transfer, be exercised by such committee to whom such transfer is made.

**13.** It shall be the duty of every trustee, manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act apply, to cause to be kept a true and correct account of the income and expenditure of the same, and to submit the same to the Civil Court at such times as the Civil Court may direct.

sions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple, or other religious establishment ;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, and of committee. manager, and superintendent of such mosque, temple, or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year ; and every such committee of management shall themselves keep such accounts thereof.

**14.** Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, Person interested may singly sue in case of breach of trust, &c. may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustee, manager, or superintendent of such mosque, temple, or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee, in respect of the trusts vested in, or confided to, them respectively ;

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee, Powers of Civil Court.

and may decree damages and costs against such trustee, manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager, superintendent, or member of a committee.

**15.** The interest required in order to entitle a person to sue Nature of interest entitling person to sue. under the last preceding section need not be a pecuniary or a direct or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking

in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

**16.** In any suit or proceeding instituted under this Act, it shall be lawful for the Court, before  
 Reference to arbitrators. which such suit or proceeding is pending, to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Whenever any such order shall be made, the provisions of Civil Procedure Code applied. Chapter VI. of the Code of Civil Procedure\* shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 312† of the said Code.

**17.** Nothing in the last preceding section shall prevent the  
 Reference under Civil Procedure Code. parties from applying to the Court, or the Court from making the order of reference under the said section 312† of the said Code of Civil Procedure.

**18.** No suit shall be entertained under this Act without a  
 Application for leave to institute suit. preliminary application being first made to the Court for leave to institute such suit. . . . ‡

The Court, on the perusal of the application, shall determine whether there are sufficient *prima-facie* grounds for the institution of a suit, and if, in the judgment of the Court, there are such grounds, leave shall be given for its institution. . . . ‡

If the Court shall be of opinion that the suit has been for the  
 Costs. benefit of the trust, and that no party to the suit is in fault, the Court may order the costs, or such portion as it may consider just, to be paid out of the estate.

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\* See now the Code of Civil Procedure (Act XIV. of 1882), Pt. V., Ch. XXXVII.

† See now the Code of Civil Procedure (Act XIV. of 1882), s. 506.

‡ The words, "the application may be made upon unstamped paper," and the words "in calculating the costs at the termination of the suit, the stamp duty on the preliminary application shall be estimated and shall be added to the costs of the suit," have here been repealed by the Court Fees Act (VII. of 1870).

**19.** Before giving leave for institution of a suit, or, after leave

Court may require accounts has been given, before any proceeding of trust to be filed. is taken, or at any time when the suit is pending, the Court may order the trustee, manager, or superintendent, or any member of a committee, as the case may be, to file, in Court the accounts of the trust, or such part thereof, as to the Court may seem necessary.

**20.** No suit or proceeding before any Civil Court under the

Proceedings for criminal preceding sections shall in any way breach of trust. affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

**21.** In any case in which any land or other property has been

Cases in which endowments granted for the support of an establishment are partly for religious and partly for secular purposes. ment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager, or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for support of any mosque, temple, &c.

**22.** Except as provided in this Act, it shall not be lawful\* for any Government in India, or for any officer of any Government in his official character,

\* In s. 22, certain formal words, which were repealed by the Repealing Act (XVI. of 1874), have here been omitted.

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith.

**23.** Nothing in this

Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity, &c.

Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples, and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

**24.** The word "India" \* in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute 21. and 22

Vict., c. 106, entitled "An Act for the better Government of India."†

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\* That is, "British India." Compare definitions of "British India" and "India" in s. 3 (7) and 3 (27) respectively of the General Clauses Act (X. of 1897).

† See the Government of India Act, 1858 (21 and 22 Vict., c. 106).

# ACT I. OF 1880.\*

## The Religious Societies Act, 1880.

RECEIVED THE G.-G.'S. ASSENT ON THE 9TH JANUARY, 1880.

*An Act to confer certain Powers on Religious Societies.*

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

**Short title.** 1. This Act may be called "The Religious Societies Act, 1880;"

**Commencement.** It shall come into force at once; and

**Local extent.** shall extend to the whole of British India;†

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor-General in Council may from time to time, by notification in the Gazette of India, exclude from the operation of this Act.

**2.** When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

Appointment of new trustees in cases not otherwise provided for.

\* For Statement of Objects and Reasons, see *Gazette of India*, 1879, Part V., p. 770; for Proceedings in Council, see *ibid*, 1879, Supplement, pp. 598, 745 and 174; *ibid*, 1880, Supplement, pp. 23 and 170.

† Act I. of 1880 has been declared, by notification under s. 3. (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts in the Chutia Nagpore Division:—The Districts of Hazaribagh, Lohardaga, and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum—See *Gazette of India*, Oct. 22 1881, Pt. I., p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determining that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections 6 and 7 shall be deemed to affect any saving of certain provisions of instruments for the dissolution of such body, or for the payment or distribution of such property.

9. When any question arises, either in connection with the Questions may be submitted to High Court. otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion



# ACT XXI. OF 1860.

## The Societies' Registration Act, 1860.\*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MAY 1860.

*An Act for the Registration of Literary, Scientific,  
and Charitable Societies.*

WHEREAS it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature,  
Preamble.

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\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

The Act (with the exception of the first four sections) is based on the Literary and Scientific Institutions Act, 1854 (17 & 18 Vict., c. 112), ss. 20, *et seq.*

It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s. 3 of the Laws Local Extent Act (XV. of 1874).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts namely :—

- (1) West Jalpaiguri (see Gazette of India, 1881, Pt. I., p. 74) :
- (2) The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see Gazette of India, 1881, Pt. I., p. 504) :
- (3) The scheduled portion of the Mirzapur District (see Gazette of India, 1879, Pt. I., p. 383) :
- (4) Jaunsar Bawar (see Gazette of India, 1879, Pt. I., p. 302) :
- (5) The Districts of Hazara, Peshwar, Kohat, Bannu, Dera Khan, and Dera Ghazi Khan (see Gazette of India, 1886, I., p. 48) :
- (6) The District of Silhat (see Gazette of India, 1879, Pt. I., p. 631) :—
- (7) The rest of Assam (except the North Lushai Hills) (see Gazette of India, 1897, Pt. I., p. 299).

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

- (1) Sindh (see Gazette of India, 1880, Pt. I., p. 672) :
- (2) Kumoan and Garhwal (see Gazette of India, 1876, Pt. I., p. 606) :
- (3) Ajmere and Merwara (see Gazette of India, 1878, Pt. I., p. 380).

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul.—See Gazette of India, 1886, Pt. I., p. 301.

science, or the fine arts, or for the diffusion of useful knowledge, or for charitable purposes; It is enacted as follows:—

1. Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-stock Companies,\* form themselves into a society under this Act.

Memorandum of association.

2. The memorandum of association shall contain the following things that is to say:—

the name of the society :

the objects of the society :

the names, addresses, and occupations of the governors' council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

3. Upon such memorandum and certified copy being filed, the

Registration. Registrar shall certify under his hand that the society is registered under this Act.

There shall be paid to the Registrar for every such registration a fee of fifty rupees, or such smaller fee as the

Fees.

Governor-General of India in Council may, from time to time, direct; and all fees so paid shall be accounted for to Government.

4. Once in every year, on or before the fourteenth day succeed-

Annual list of managing ing the day on which, according to the body to be filed. rules of the society, the annual general

meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-stock Companies, of the names, addresses, and occupations of the governors, council, directors, committee, or other governing body then entrusted with the management of the affairs of the society.

\* In s. 1, the words, "under Act XIX. of 1857," repealed by the Repealing Act (XVI. of 1874), have here been omitted. See now the Indian Companies Act (VI. of 1882), s. 255.

5. The property, moveable and immoveable, belonging to a society registered under this Act, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

6. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion :

Provided that it shall be competent for any person having a claim or demand against the society to sue the president or chairman, or principal secretary, or the trustees thereof, if, on application to the governing body, some other officer or person be not nominated to be the defendant.

7. No suit or proceeding in any Civil Court shall abate or discontinue by reason of the person by or against whom such suit or proceeding shall have been brought or continued, dying or ceasing to fill the character in the name whereof he shall have sued or been sued, but the same suit or proceeding shall be continued in the name of or against the successor of such person.

8. If a judgment shall be recovered against the person or officer named on behalf of the society, such judgment shall not be put in force against the property, moveable or immoveable, or against the body of such person or officer, but against the property of the society.

The application for execution shall set forth the judgment, the fact of the party against whom it shall have been recovered having sued or having been sued, as the case may be, on behalf of the society only, and shall require to have the judgment enforced against the property of the society.

9. Whenever, by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules do not provide for the making of bye-laws, by any bye-law made at a general meeting of the members of the society convened for the purpose (for the making of which the concurrent votes of three-fifths of the members present at such meeting shall

be necessary), any pecuniary penalty is imposed for the breach of any rule or bye-law of the society, such penalty, when accrued, may be recovered in any Court having jurisdiction where the defendant shall reside, or the society shall be situate, as the governing body thereof shall deem expedient.

10. Any member who may be in arrear of a subscription which, Members liable to be sued according to the rules of the society, he is as strangers. bound to pay, or who shall possess himself of, or detain, any property of the society in a manner or for a time contrary to such rules, or shall injure or destroy any property of the society. may be sued for such arrear or for the damage accruing from such detention, injury, or destruction of property in the manner hereinbefore provided.

But if the defendant shall be successful in any suit or other proceeding brought against him at the instance of the society, and shall be adjudged to recover his costs, he may elect to proceed to recover the same from the officer in whose name the suit shall be brought, or from the society, and in the latter case shall have process against the property of the said society in the manner above described.

11. Any member of the society who shall steal, purloin, or Members guilty of offences punishable as strangers. embezzle any money or other property, or wilfully and maliciously destroy or injure any property of such society, or shall forge any deed, bond, security for money, receipt, or other instrument, whereby the funds of the society may be exposed to loss, shall be subject to the same prosecution, and, if convicted, shall be liable to be punished in like manner as any person not a member would be subject and liable to in respect of the like offence.

12. Whenever it shall appear to the governing body of any Society enabled to alter, extend, or abridge their purposes. society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society, either wholly or partially, with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society ;

but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of

the society ten days previous to the special meeting convened by the governing body for the consideration thereof, nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

**13.** Any number not less than three-fifths of the members of

any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then

agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, if any, and, if not, then as the governing body shall find expedient :

Provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the society is situate; and the Court shall make such order in the matter as it shall deem requisite :

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish

Assent required.

for such dissolution by their votes delivered in person, or by proxy, at a general meeting convened for the purpose :

Provided that, whenever the Government is a member of, or a contributor to, or otherwise interested in,

Government consent.

any society registered under this Act, such society shall not be dissolved without the consent of Government.

**14.** If, upon the dissolution of any society registered under this

Act, there shall remain, after the satisfaction of all its debts and liabilities, any

property whatsoever, the same shall not be paid to, or distributed among, the members of the said society or any of them, but shall be given to some other society, to be determined by the votes of not less than three-fifths of the members present, personally or by proxy, at the time of the dissolution, or, in default thereof, by such Court as aforesaid.



# ACT III. OF 1872.

## The Special Marriage Act, 1872.\*

RECEIVED THE G.-G'S ASSENT ON THE 22ND MARCH 1872.

*An Act to provide a Form of Marriage in certain cases.*

WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muham-  
Preamble. madan, Parsi, Buddhist, Sikh, or Jaina religion, and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows :—

Local extent. 1. This Act extends to the whole of British India.†

[Commencement.] Repealed by the Repealing Act (XVI. of 1874).

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\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

There was no Statement of Objects and Reasons; the Bill as introduced was published in the Gazette of India, 1868, p. 1403; for the Report of the Select Committee, dated 21st December 1871, see *ibid*, 1871, Pt. V., p. 519; for discussions in Council, see *ibid*, 1868, Supplement, pp. 890 and 1197; *ibid*, 1871, Extra Supplement, pp. 16 and 42; *ibid*, 1872, Supplement, pp. 2, 57, 193, and 261.

† Act III. of 1872 has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886); in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3; in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely :—

(1) the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum.—See Gazette of India, 1881; Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

(2) the North-Western Provinces Tarai—See *ibid*, 1876, Pt. I., p. 505.

**2.** Marriages may be celebrated under this Act between  
 Conditions upon which persons neither of whom professes the  
 marriages under Act may be Christian or the Jewish, or the Hindu or  
 celebrated. the Muhammadan, or the Parsi or the  
 Buddhist, or the Sikh or the Jaina religion, upon the following con-  
 ditions :—

- (1) neither party must, at the time of the marriage, have a husband or wife living;
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar :
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage :
- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

*1st Proviso.*—No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

*2nd Proviso.*—No law or custom as to consanguinity shall prevent them from marrying unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grandfather or great-great-grandmother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

**3.\*** The Local Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The

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\* For notifications appointing Registrars under this section for districts in—

- (a) Assam, see Assam Rules Manual, Ed. 1893, p. 26;
- (b) Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 98;
- (c) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19,
- (d) North-Western Provinces and Oudh, see Notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.



officer so appointed shall be called "Registrar of Marriages under Act III. of 1872," and is hereinafter referred to as the "Registrar." The portion of territory for which any such officer is appointed shall be deemed his district.

4. When a marriage is intended to be solemnized under this Act, one of the parties to give notice to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. The Registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III. of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Fourteen days after notice of an intended marriage has been given under section 4, such objection to marriage. marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clause 1, 2, 3, or 4 of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him, or on his behalf.

7. On receipt of such notice of objection, the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court

open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree declaring that such marriage would contravene some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2.

8. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to be lodged with Registrar. to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given, and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2, the marriage shall not be solemnized.

9. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear Court may fine when objection not reasonable. to it that the objection was not reasonable and *bona-fide*, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

10. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If witnesses.

either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and in every case it shall be countersigned by the Registrar.

**11.** The marriage shall be solemnized in the presence of the Registrar, and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A] take thee [B] to be my lawful wife (or husband)."

**12.\*** The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Local Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon.

**13.** When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose, and to be called the "Marriage Certificate Book under Act III. of 1872" in the form given in the third schedule to this Act; and such certificate shall be signed by the parties to the marriage and the three witnesses.

**13A.†** The Registrar shall send to the Registrar-General of Births, Deaths, and Marriages for the territories within which his district is situate, at such intervals as the Governor-General in Council, from time to time, directs,‡ a true copy certified by

Transmission of certified copies of entries in Marriage Certificate Book to the Registrar-General of Births, Deaths, and Marriages.

\* For rules framed under this section for—

(a) Assam, see Assam Rules Manual, Ed. 1893, p. 27;

(b) North-Western Provinces and Oudh, see Notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

† S. 13A has been inserted by the Births, Deaths, and Marriages Registration Act (VI. of 1886), s. 29.

‡ For orders issued under this section, see Gazette of India, 1889, Supplement, p. 921.

him, in such form as the Governor-General in Council, from time to time, prescribes, of all entries made by him in the said Marriage Certificate Book since the last of such intervals.\*

**14.** The Local Government shall prescribe the fees to be paid the Registrar for the duties to be discharged by him under this Act.†

The Registrar may, if he think fit, demand payment of any such fee before solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage Certificate Book shall, at all reasonable times, be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall, on application, be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Local Government for each such extract.

**15.** Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code,‡ as the case may be; and the marriage so solemnized is void.

**16.** Every person married under this Act who, during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code‡ for the offence of marrying again

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\* As to the duty of the Registrar-General to make and keep indexes of the certified copies sent to his office under this section, see the Births, Deaths, and Marriages Registration Act (VI. of 1886), s. 7.

† For scales of fees to be paid to Registrars of Marriages prescribed by—

(a) the Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 98;

(b) Chief Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19.

(c) Government, North-Western Provinces and Oudh, see Notification quoted at page 42 of the North-Western Provinces and Oudh List of Local Rule and Orders, Ed. 1894.

‡ Act XLV. of 1860.

during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

**17.** The Indian Divorce Act\* shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clause (1), (2), (3), or (4) of section 2 of this Act.

**18.** The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

**19.** Nothing in this Act contained shall affect the validity of any marriage not solemnized under its provisions: nor shall this Act be deemed, directly or indirectly, to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

**20.** [*Registry of marriages contracted before passing of Act.*]  
*Repealed by the Repealing Act (XII. of 1876).*

**21.** Every person making, signing, or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Indian Penal Code.†

\* Act IV. of 1869.

† Act XLV. of 1860.



# ACT I. OF 1877.

## The Specific Relief Act.

[As Amended up to July 1911.]

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CHAPTER X.

OF PERPETUAL INJUNCTIONS.

- 54. Perpetual injunctions when granted.
- 55. Mandatory injunctions.
- 56. Injunction when refused.
- 57. Injunction to perform negative agreement.

SCHEDULE.

[ENACTMENTS REPEALED.]

*Repealed.*



Ss. 2 and 9 of the Act have been extended to the taluqs of Bhádrá-chalam and Rákapiḷli and the Rampa Country.—See *Gazette of India*, Oct. 4, 1879, Pt. I., p. 630.

Commencement.

And it shall come into force on the first day of May 1877.

**2.** [*Repealed by Act XII. of 1891.*]

Interpretation-clause.

**3.** In this Act, unless there be something repugnant in the subject or context,—

‘Obligation.’

‘obligation’ includes every duty enforceable by law :

‘trust.’

‘trust’ includes every species of express, implied or constructive fiduciary ownership :

‘trustee.’

‘trustee’ includes every person holding, expressly, by implication, or constructively, a fiduciary character :

*Illustrations.*

(a.) Z bequeaths land to A, not doubting that he will pay thereout an annuity of Rs 1,000 to B for his life. A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b.) A is the legal, medical, or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee for B, within the meaning of this Act, of such advantage.

(c.) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d.) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e.) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(f.) A, the manager of B's indigo factory, becomes agent for C, a vendor of indigo seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g.) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h.) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, of C, to the extent of that interest.

'settlement' means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interest in moveable or immoveable property is disposed of, or is agreed to be disposed of:

and all words occurring in this Act, which are defined in the Words defined in Con- Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which is not a contract;

(b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or

(c) to affect the operation of the Indian Registration Act\* on documents.

Specific relief how given.

5. Specific relief is given—

(a) by taking possession of certain property, and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a Receiver.

Preventive relief.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

\* The reference to Act VIII. of 1871 is altered in accordance with Act III. of 1877, s. 2. But see now Act XVI. of 1908.

Relief not granted to enforce penal law.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

## PART II. OF SPECIFIC RELIEF.

### CHAPTER I.—OF RECOVERING POSSESSION OF PROPERTY.

#### (a.) *Possession of Immoveable Property.*

8. [A] person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.\*

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit,† recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property, and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

#### (b.) *Possession of Moveable Property.*

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.\*

*Explanation. 1.*—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

\* See Act XIV. of 1882, s. 3. Now, Act V. of 1908.

† Here certain words, repealed by Act XII. of 1891, have been omitted.

*Explanation 2.*—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

*Illustrations.*

(a.) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b.) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c.) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d.) A deposits books and papers for safe custody with B. B loses them, and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right (if any) under section 168 of the Indian Contract Act, 1872.

(e.) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

**11.** Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession in any of the following cases:—

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

*Illustrations.*

of clause a.—A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

**14.** Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

*Illustrations.*

(a.) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed, at the suit of B, to convey to B the 98 bighas, and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b.) In a contract for the sale and purchase of a house and lands for two lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract, notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit, and include it in the decree for specific performance, or may confine its decree to the house.

**15.** Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

*Illustrations.*

(a.) A contracts to sell to B a piece of land consisting of 100 bighas. It turns out that 50 bighas of the land belong to A, and the other 50 bighas to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the 50 bighas which



belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighas to him on payment of the purchase-money.

(b.) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but, if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all rights to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

**16.** When a part of a contract, which, taken by itself, can and ought to be specifically performed, stands independent part of contract. on a separate and independent footing. from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

**17.** The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Bar in other cases of specific performance of part of contract.

**18.** Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

Purchaser's rights against vendor with imperfect title.

- (a) if the vendor or lessor has, subsequently to the sale or lease, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
- (b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;
- (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has, in fact, only a right to redeem it, the purchaser may compel him to redeem the mortgage, and to obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest, and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

*Explanation.*—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

### *Illustrations.*

of the second paragraph :—A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract, or to pay compensation. The Court is of opinion that A has made a valid contract, and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph :—A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the explanation:—A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

**20.** A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

#### *Illustration.*

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license, and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

#### *(b.) Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

**21.** The following contracts cannot be specifically enforced:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms;
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,\* no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

### *Illustrations.*

to a.—A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India:

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest:

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for, in the first and the second, both A and B, and in the third A, would be reimbursed by compensation in money.

to b.—A contracts to render personal service to B:

A contracts to employ B on personal service:

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but, before the valuation is made, A instructs his valuer not to proceed:

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London:

A lets land to B, and B contracts to cultivate it in a particular manner for three years next after the date of the lease:

A and B contract that, in consideration of annual advances to be made by A, B will, for three years next after the date of the contract, grow

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\* See Act XIV. of 1882, s. 3; now Act V. of 1908.

particular crops on the land in his possession, and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of certain house for a specified term at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to *c.*—A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods, and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation, and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to *d.*—A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed ; for, if it were so performed either A or B might at once dissolve the partnership.

to *e.*—A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

The trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to *f.*—A company, existing for the sole purpose of making and working a railway, contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to *g.*—A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A

should, during the term, keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to *h*.—A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c.) *Of the Discretion of the Court.*

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles, and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(a.) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury, from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b.) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c.) A contracts to sell, and B contracts to buy certain land. To protect the land from floods, it is necessary, for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d.) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puff, and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

### *Illustrations.*

(e.) A is entitled to some land under his father's will on condition that, if he sells, it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition contracts, before the expiration of the twenty-five years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel it specific performance in favour of C.

(f.) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g.) A, the owner of an estate, contracts to sell it to B, and stipulates that he (A) shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h.) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i.) A, a leasee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines and that he shall have that the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j.) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k.) A contracts with B to buy from B's manufactory, and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods; but if he does not supply them, A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance

*Illustration.*

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

*(d.) For whom Contracts may be specifically enforced.*

**23.** Except as otherwise provided by this chapter the specific-  
Who may obtain specific performance of a contract may be obtained by —

- (a) any party thereto ;
- (b) the representative in interest, or the principal, of any party thereto, provided that, where the learning, skill solvency, or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;
- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man ;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title, and the reversioner is entitled to the benefit of such a covenant ;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof, and will sustain material injury by reason of its breach ;
- (g) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;



(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e.) *For whom Contracts cannot be specifically enforced.*

Personal bars to the relief.

**24.** Specific performance of a contract cannot be enforced in favour of a person—

- (a) who could not recover compensation for its breach ;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;
- (c) who has already chosen his remedy, and obtained satisfaction for the alleged breach of contract ; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

### *Illustrations.*

to clause *a*.—A, in the character of agent for B, enters into an agreement with C to buy C's house. A is, in reality, acting, not as agent for B, but on his own account. A cannot enforce specific performance of this contract.

to clause *b*.—A contracts to sell B a house, and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B, for a lease, commits waste or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house, and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner ; he cannot enforce the contract specifically, though A and B may sue each other for compensation for breach of it.

to clause *c*.—A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A

thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same ;
- (b) who though he entered into the contract, believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt ;
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

#### *Illustrations.*

(a.) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to perform it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as, in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c.) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d.) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to override the settlement, and thus prejudice the interests of the persons claiming under it.

*(f.) For whom Contracts cannot be specifically enforced, except with a variation.*

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot  
Non-enforcement except with variation.

obtain the performance sought, except with the variation, so set up, in the following cases (namely) :—

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;
- (b) where, by fraud, mistake of fact, or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;
- (c) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part which adds to the contract, but which he refuses to fulfil ;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

#### *Illustrations.*

(a.) A, B, and C sign a writing, by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D to make A, B, and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b.) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c.) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(d.) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e.) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing; so, with B's consent, A pulls it down, and erects a new house in its place; B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

*(g.) Against whom Contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

**27.** Except as otherwise provided by this chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract, and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation, entered into a contract, the company: provided that the company has ratified and adopted the contract, and the contract is warranted by the terms of the incorporation.

*Illustrations.*

to clause b.—A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic, and C is appointed his committee. B may specifically enforce the contract against C.

to clause c.—A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C, and dies. C may enforce specific performance of the contract against B.

*(h.) Against whom Contracts cannot be specifically enforced.*

## 28. Specific performance of a contract cannot be enforced

What parties cannot be against a party thereto in any of the following cases :—

- (a) if the consideration to be received by him is so grossly inadequate with reference to the state of things existing at the date of the contract as to be, either by itself or coupled with other circumstances, evidence of fraud, or of undue advantage taken by the plaintiff;
- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;
- (c) if his assent was given under the influence of mistake of fact, misapprehension, or surprise: provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

### *Illustrations.*

to clause c.—A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property, B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to so much of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i.) *The Effect of dismissing a Suit for Specific Performance.*

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j.) *Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this chapter as to contract shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

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## CHAPTER III.

### OF THE RECTIFICATION OF INSTRUMENTS.

31. When, through fraud or a mutual mistake of the parties, a contract, or other instrument in writing, does not truly express their intention, either party or his representative in interest may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may, in its discretion, rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

#### *Illustrations.*

(a.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b.) By a marriage-settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators, and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent, and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

**32.** For the purpose of rectifying a contract in writing the Presumption as to intent Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

**33.** In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

**34.** A contract in writing may be first rectified, and then, if the plaintiff has so prayed in his Specific enforcement of rectified contract. if the plaintiff has so prayed in his plaint, and the Court thinks fit, specifically enforced.

#### *Illustration.*

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes, as to the name and rights of the client, which, if construed strictly, would exclude, B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

## CHAPTER IV.

### OF THE RESCISSION OF CONTRACTS.

**35.\*** Any person interested in a contract in writing may sue to have it rescinded, and such rescission When rescission may be adjudged. may be adjudged by the Court in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

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\* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which that Act is in force.—See Act IV. of 1882, ss. 1 and 2.

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Application of preceding sections to awards and testamentary directions to execute settlements.

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#### *Illustrations.*

(a.) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C, and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.



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**32.** For the purpose of rectifying a contract in writing the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

**33.** In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

**34.** A contract in writing may be first rectified, and then, if the plaintiff has so prayed in his complaint, and the Court thinks fit, specifically enforced.

#### *Illustration.*

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes, as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

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(a) where the contract is voidable or terminable by the plaintiff;

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\* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which that Act is in force.—See Act IV. of 1882, ss. 1 and 2.

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums, which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits (if any) received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract either so far as regards the party in default, or altogether as the justice of the case may require.

### *Illustrations.*

to a.—A sells a field to B. There is a right of way over the field of which A has direct personal knowledge but which he conceals from B. B is entitled to have the contract rescinded.

to b.—A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

### 36.\* Rescission of a contract in writing cannot be adjudged

for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

\* In ss. 35 and 36 the words "in writing" have been repealed by the Transfer of Property Act (IV. of 1882) in territories in which that Act is in force.—See Act IV. of 1882, ss. 1 and 2.

**38.** On adjudging the rescission of a contract, the Court may require party may require the party to whom such rescinding to do equity. relief is granted to make any compensation to the other which justice may require.

## CHAPTER V.

### OF THE CANCELLATION OF INSTRUMENTS.

**39.** Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it, and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act, 1871,\* the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

#### *Illustrations.*

(a.) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b.) A conveys land to B, who bequeaths it to C, and dies. Thereupon D gets possession of the land, and produces a forged instrument, stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c.) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October 1876, and procures the lease to be registered under the Indian Registration Act, 1871.\* B may obtain the cancellation of this lease.

(d.) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000 to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

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\* The reference to Act VIII. of 1871 has been altered in accordance with Act III. of 1877, s. 2. See now Act XVI. of 1908.

**40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part, and allow it to stand for the residue.**

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

**41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.**

## CHAPTER VI.

### OF DECLARATORY DECREES.

**42. Any person entitled to any legal character, or to any Discretion of Court as right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not, in such suit, ask for any further relief ;**

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

*Explanation.*—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

*Illustrations.*

(a.) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for declaration that they are not entitled to the right so claimed.

(b.) A bequeaths his property to B, C, and D, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against A's executor, the Court may declare whether B, C, and D took the property absolutely, or only for their lives, and it may also declare the interest of the children before their rights are vested.

(c.) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d.) A alienates to B property in which A has merely a life-interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may, in a suit by C, against A and B, declare that C is so entitled.

(e.) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity, and was therefore void beyond the widow's life-time.

(f.) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g.) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h.) A bequeaths property to B for his life, with remainder to B's wife and her children (if any) by B, but if B die without any wife or children to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's lifetime, institute a suit against C, and obtain therein a declaration that they are truly the wife and children of B.

**43.** A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

#### *Illustration.*

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized, and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

## CHAPTER VII.

## OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a receiver pending a suit is a matter of discretion of the Court.

The mode and effect of his appointment, and his rights, powers, duties, and liabilities, are regulated by the Code of Civil Procedure.\*

## CHAPTER VIII.

## OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may make an

order requiring any specific act to be done or forbore, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature: provided—

(a) that an application for such order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;

(b) that such doing or forbearing is under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;

(d) that the applicant has no other specific and adequate legal remedy; and

(e) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

Exemptions from such power.

\* This reference should now be read as applying to Act XIV. of 1882—See s. 3 of that Act. But see now Act V. of 1908.

(f) to make any order binding on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal;

(g) to make any order on any other servant of the Crown as such merely to enforce the satisfaction of a claim upon the Crown; or

(h) to make any order which is otherwise expressly excluded by any law for the time being in force.

46. Every application under section 45 must be founded on

Application how made. an affidavit of the person injured, stating his right in the matter in question, his demand of justice, and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule Procedure thereon. to show cause why the order applied for should not be made.

If in the last case the person, Court, or corporation complained of, shows no sufficient cause, the Order in alternative. High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary, and make an answer thereto by such day as the High Court fixes in this behalf.

47. If the person, Court, or corporation, to whom or to which such order is directed, makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely. Peremptory order.

48. Every order under this chapter shall be executed, and Execution of, and appeal may be appealed from, as if it were a from, orders. decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

49. The costs of all applications and orders under this chapter shall be in the discretion of the High Court. Costs.

Bar to issue of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

**51.** Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

### PART III.

#### OF PREVENTIVE RELIEF.

### CHAPTER IX.

#### OF INJUNCTIONS GENERALLY.

**52.** Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

**53.** Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.\*

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

### CHAPTER X.

#### OF PERPETUAL INJUNCTIONS.

**54.** Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent breach of an obligation existing in favour of the applicant, whether expressly or by implication.

\* See Act XIV. of 1881, ss. 492-497. See now Act V. of 1908.



When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II. of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely):—

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

*Explanation.*—For the purpose of this section, a trade-mark is property.

#### *Illustrations.*

(a.) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b.) A trustee threatens a breach of trust. His co-trustees (if any) should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d.) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g.) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell

the estate to C, B or any of his children may sue for an injunction to restrain the sale.

(h.) In the course of A's employment as a vakil, certain papers belong to his client B, came into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i.) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j.) A, the owner of two adjoining houses, lets one to B, and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k.) A lets certain arable lands to B, for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto, and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l.) A, B, and C, are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m.) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n.) A, B, and C, are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house, and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee, and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q.) A in an administration-suit, to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine, and

threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C, may sue for an injunction to restrain the pollution.

(u.) A infringes B's patent. If the Court is satisfied that the patent is valid, and has been infringed, B may obtain an injunction to restrain the infringement.

(v.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w.) A improperly uses the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade-mark is honest.

(x.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z.) A carries on a manufactory, and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose that process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

**55.** When, to prevent the breach of an obligation, it is neces-

Mandatory injunctions.      sary to compel the performance of certain acts which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

#### *Illustrations.*

(a.) A, by new buildings, obstructs lights, to the access and use of which B has acquired a right under the Indian Limitation Act, 1877, Part IV.\* B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

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\* The reference to Act IX. of 1871 has been altered in accordance with Act XV. of 1877, s. 2. See now Act IX. of 1908.

(b.) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c.) In the case put as illustration *f* to section 54, the Court may also order all written communications made by B, as patent, to A, as medical adviser, to be destroyed.

(d.) In the case put as illustration *g* to s. 54, the Court may, also order A's letters to be destroyed.

(e.) A threatens to publish statements concerning B, which would be punishable under Chapter XXI. of the Indian Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f.) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g.) In the cases put as illustrations *v* and *w* to section 54 and in illustrations *e* and *f* to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements, and communications, therein respectively mentioned, to be given up or destroyed.

**56. An injunction cannot be granted—**

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(c) to restrain persons from applying to any legislative body;

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government;

(e) to stay proceedings in any criminal matter;

(f) to prevent the breach of a contract the performance of which would not be specially enforced;

(g) to prevent, on ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(h) to prevent a continuing breach in which the applicant has acquiesced;

(i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(f) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;

(g) where the applicant has no personal interest in the matter.

### *Illustrations.*

(a.) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm, and refused B access to them. The Court will refuse the injunction.

(b.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c.) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article, to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hogs' lard. A's use of his description is not an honest one, and he cannot obtain an injunction.

**57.** Notwithstanding section 56, clause f, where a contract Injunction to perform comprises an affirmative agreement to do negative agreement. a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

### *Illustrations.*

(a.) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A contracts with B to sing for twelve months at B's theatre, and not to sing in public elsewhere. B cannot obtain specific performance of

the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d.) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e.) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

## SCHEDULE.—(See section 2.)

### ENACTMENTS REPEALED.

[Repealed by Act XII. of 1891.]

# ACT NO. II. OF 1899:

## The Indian Stamp Act, 1899.

[As amended up to 31st December 1910.]

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SCHEDULE I.—STAMP-DUTY ON INSTRUMENTS.

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## ACT NO. II. OF 1899:

The Indian Stamp Act, 1899.

[As amended up to 31st December 1910.]

[Received the Governor-General's Assent on the 27th January 1899]

*An Act to consolidate and amend the Law relating to Stamps.*

WHEREAS it is expedient to consolidate and amend the law relating to Stamps, it is hereby enacted as follows:—

The words in italics throughout this Act indicate additions and modifications.

## CHAPTER I.

## PRELIMINARY.

— Short title, extent and commencement.

1. (1) This Act may be called the Indian Stamp Act, 1899.

(2) It extends to the whole of British India inclusive of Upper Burma, British Baluchistan, the Santal Parganas, and the Parganas of Sibi; and

(3) It shall come into force on the first day of July 1899.

S. 2 of the old Act has been repealed.—See the General Clauses Act (X. of 1897), ss. 6, 8, and 24. The repealed section (as partially repealed by Act XII. of 1891) ran as follows:—

"2. *Saving of things done under former Act*—All rules made under the General Stamp Act, 1869, and then in force, shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.Definitions.  
2. In this Act, unless there is something repugnant in the subject or context—

(1) "Banker" includes a bank and any person acting as a Banker:

(2) "**Bill of exchange**" means a bill of exchange as defined by the *Negotiable Instruments Act, 1881*,\* and includes also a hundi and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money:

In the old Act, the definition of "bill of exchange" was merely this: "Bill of exchange" includes a hundi."

(3) "**Bill of exchange payable on demand**" includes—

(a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;

(b) an order for the payment of any sum of money weekly, monthly, or at any other stated periods; and

(c) a letter of credit, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn:

(4) "**Bill of Lading**" includes a "through bill of lading," but does not include a mate's receipt:

In the old Act, the definition of "bill of lading" was as follows: "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place, and to a person, therein mentioned or indicated."

(5) "**Bond**" includes—

(a) any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

In the above definition of "bond," the italicised word *includes* has been substituted for the word "means."

(6) "Chargeable" means, as applied to an instrument executed or first executed after *the commencement of this Act*, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed :

The words "after the commencement of this Act," have been substituted for the words, "after this Act comes into force."

(7) "Cheque" means a bill of exchange drawn on a specific banker, and *not expressed to be payable otherwise than on demand*. The italicized words in the above definition are new.

(8) "Chief Controlling Revenue-authority" means—  
(a) in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue ;  
(b) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner ;

(c) in Sindh—the Commissioner ;

(d) in the Punjab and *Burma including Upper Burma*—the Financial Commissioner ; and

(e) elsewhere—the Local Government, or such officer as the Local Government may, by notification in the official gazette, appoint in this behalf :

In cl. (d) the italicized words are new.  
In cl. (e) after the words, "appoint in this behalf," the words "by name or in virtue of his office" have been omitted.

(9) "Collector"—

(a) means, within the limits of the towns of Calcutta, Madras, and Bombay, the Collector of Calcutta, Madras, and Bombay, respectively, and, without those limits, the Collector of a district, and

(b) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official gazette, appoint in this behalf :

In cl. (b), after the words, "appoint in this behalf," the words "by name or in virtue of his office" have been omitted.

(10) "**Conveyance**" *includes a conveyance on sale and every instrument by which property, whether moveable or immoveable, is transferred inter vivos, and which is not otherwise specifically provided for by Schedule I.*

The old definition of "conveyance" was as follows: "(9) 'Conveyance' means any instrument by which property (whether moveable or immoveable) is transferred on sale."

(11) "**Duly stamped**" as applied to an instrument, means *that the instrument bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India:*

In the old Act, the definition of "duly stamped" was as follows: "(10) 'Duly stamped,' as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed."

(12) "**Executed**" and "**Execution**," used with *reference to instruments, mean "signed" and signature:*"

(13) "**Impressed stamp**" *includes—*

- (a) *labels affixed and impressed by the proper officer, and*
- (b) *stamps embossed and engraved on stamped paper.*

(14) "**Instrument**" *includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished, or recorded:*

(15) "**Instrument of partition**" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court, and an award by an arbitrator directing a partition:

The italicized words in the above definition are new.

(16) "**Lease**" means a lease of immoveable property, and includes also—

- (a) a patta;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property;

- (c) any instrument by which tolls of any description are let;  
 (d) any writing on any application for a lease intended to signify that the application is granted;

(16a)\* "Marketable security" means a security of such a description as to be capable of being sold in any stock-market in British India, or in the United Kingdom:

(17) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers or creates, to or in favour of another, a right over, or in respect of, specified property:

The italicized words, "or in respect of," are new.

(18) "Paper" includes vellum, parchment, or any other material on which an instrument may be written:

(19) "Policy of insurance" includes—

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damages, or liability arising from an unknown or contingent event;

(b) a life-policy, and any policy insuring any person against accident or sickness and any other personal insurance;

In the above definition of "policy of insurance," the italicized word *includes* has been substituted for the word "means." In cl. (b) the italicized words are new.

(20) "Policy of sea-insurance" or "sea-policy"—

(a) means any insurance made upon any ship or vessel (*whether for marine or inland navigation*), or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and

\* Cl. 16A has been added by Act XV. of 1904, s. 2 (a).  
 † Here the word "and" and sub-cl. (c) have been repealed by Act V. of 1906, s. 2.

- (b) includes any insurance of goods, merchandise, or property for any transit which includes, not only a sea-risk *within the meaning of clause (a)*, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance:

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise, or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise, or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance:

In the former Act, the definition of "policy of sea-insurance" was included in the definition of "policy of insurance," and was immediately after sub-cl. (c) of the present cl. (19), and ran thus: "..... It (*i. e.*, policy of insurance) includes also a policy of sea-insurance, such a policy (*a*) meaning any insurance made upon any ship or vessel," &c. The rest of the words are in sub-cl. (a) and (b), and in the last para. of cl. (20) except the italicized words, which are new.

(21) "**Power-of-attorney**" *includes* any instrument (not chargeable with a fee under the law\* relating to court-fees for the time being in force) empowering a specified person to act *for, and* in the name of, the person executing it:

In the definition of "power of-attorney," the italicized word *includes* has been substituted for the word "means;" the italicized words "*for, and,*" after "act," are new; and the italicized word *name* has been substituted for "stead."

(22) "**Promissory note**" *means a promissory note as defined by the Negotiable Instruments Act, 1881; †*

*it also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen:*

(23) "**Receipt**" *includes* any note, memorandum, or writing—

- (a) whereby any money, or any bill of exchange, cheque, or promissory note is acknowledged to have been received, or

\* The Court Fees Act (VII. of 1870). † Act XXVI. of 1881.

- (b) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or (d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person; and

In the definition of "receipt," the italicized word *includes* has been substituted for the word "means." The definition of the word "Schedule" has here been omitted.—See the General Clauses Act (X. of 1897), s. 3.

- (24) "Settlement" means any non-testamentary disposition, in writing, of moveable or immovable property, made—

- (a) in consideration of marriage,  
 (b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

- (c) for any religious or charitable purpose:

and includes an agreement in writing to make such a disposition; "and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition."\*

The definitions of "vessel," and of "written" and "writing," have here been omitted—See the General Clauses Act (X. of 1897), s. 3.

The following section of the old Act has also been omitted [see the General Clauses Act (X. of 1897), s. 3 (48)]:—

"4. *Schedules to be read as part of Act.*—The schedules and everything therein contained should be read and construed as part of this Act."

## CHAPTER II.

### STAMP-DUTIES.

#### A.—Of the Liability of Instruments to Duty.

3. Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments chargeable with duty.

\* The words quoted have been added by Act XV. of 1904, s. 2, cl. (b).



duty of the amount indicated in *that* schedule as the proper duty therefor respectively, that is to say—

- (a) every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in British India on or after the first day of *July, 1899*;
- (b) every bill of exchange, cheque, or promissory note drawn or made out of British India on or after that day, and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated, in British India; and
- (c) every instrument (other than a bill of exchange, cheque, or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India:

*Provided that no duty shall be chargeable in respect of—*

(1) any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instruments;

(2) any instrument for the sale, transfer, or of either absolutely or by way of mortgage or otherwise, of vessel, or any part-interest, share, or property of or vessel registered under the Merchant Shipping Act, 1817 Act XIX. of 1838, or the Indian Registration of Ships as amended by subsequent Acts.

4. (1) Where, in the case of any sale, mortgage,

Several instruments used in single transaction of sale, mortgage, or settlement. several instruments are completing the transaction, instrument only shall be the duty prescribed in Schedule I. for the conveyance, or settlement, and each of the other instruments shall be with a duty of one rupee instead of the duty (if any) prescribed in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument:

*Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.*

In sub-s. (2), the italicized words and figure, sub-section (1) have been substituted for the words "this section."

5. Any instrument comprising or relating to several distinct instruments relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

6. Subject to the provisions of the last-*preceding* section, an instrument so framed as to come within two or more of the descriptions in Schedule I. shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

*Provided that nothing in this Act contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty, and in respect of which the proper duty has been paid.*

In s. 6, the italicized word, "*last-preceding*," has been substituted for the words, "first clause of this" (the first clause now being s. 5); the italicized words, "*Provided that*," for "but"; and the italicized words, "*this Act*," for "herein."

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section 506 of the Merchant Shipping Act, 1894\*) shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(2) No sea-policy shall be valid unless it specifies the particular risk or adventure or the time for which it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage, and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination, and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

In s. 7, the italicized figures 506 have been substituted for the figures "55;" the words and figures, "Merchant Shipping Act, 1894" have been substituted for the words and figures, "Merchant Shipping Act Amendment Act, 1862;" and the word "*sea-policy*" has throughout been substituted for the words "policy of sea-insurance."

8. (1) No twithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities' Loans Act, 1879\* or of any other law for the time being in force, by the issue of bonds, debentures, or other *securities*, shall, in respect of such loan, be chargeable with a duty of "*one per centum*"† on the total amount of the bonds, debentures, or other *securities* issued by it, and such bonds, debentures, or other *securities* need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division, or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures, or other *securities* from being stamped, and from being chargeable with certain further duty, shall apply to the bonds, debentures, or other *securities* of all outstanding loans of the kind mentioned therein, and all such bonds, debentures, or other *securities* shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures, or other *securities*, from the duty chargeable in respect thereof prior to the twenty-sixth day of March 1897, when such duty has not already been paid or remitted by order issued by the Governor-General in Council.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

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\* Act XI. of 1879.

† Substituted for "*eight annas per centum*" by Act VI. of 1910.

In s. 8, the italicized word "*securities*," wherever it occurs, has been substituted for the word "*certificates*."

In the proviso, the italicized words "*by the Governor-General in Council*," have been substituted for the words "*under this Act*."

Cl. (3) is new.

Power to reduce, remit, or  
 9. The Governor-General in Council may, by rule or order published in the *Gazette of India*—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments, when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties, in the case of issues, by any incorporated company or other body corporate, of debentures, bonds, or other marketable securities.

In s. 9, the italicized words, *rule or*, are new.  
 The old cl. (b) was as follows: "(b) cancel or vary such order to the extent of the powers hereby given."

### B.—Of Stamps and the Mode of using them.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such amount shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or,  
 (b) when no such provision is applicable thereto—as the Governor-General in Council may by rule direct.

(2) The rules made under *sub-section (1)* may, among other matters, regulate—

(a) in the case of each kind of instrument—the description of stamps which may be used;  
 (b) in the case of instruments stamped with impressed stamps—the number of stamps which may be used;

(c) in the case of *bills of exchange or promissory notes written in any Oriental language*—the size of the paper on which they are written.

The italicized words in cl. (c) have been substituted for the word “hundis.”

Use of adhesive stamps. **11.** The following instruments may be stamped with adhesive stamps, namely—

(a) instruments chargeable with the duty of one anna, “or half an anna”\* except parts of bills of exchange payable otherwise than on demand, and drawn in sets;

(b) bills of exchange, cheques, and promissory notes drawn or made out of British India;

(c) entry as an advocate, vakil, or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares *in any incorporated company or other body corporate.*

The italicized words in cl. (e) have been substituted for the words “of public Companies and Associations.”

**12. (1)** (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same, so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled, so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) *The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.*

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\* The words quoted have been added by Act V. of 1906, s. 3.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent any endorsement which is duly stamped, or is not chargeable with duty, being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

15. Every instrument written in contravention of section 13 or section 14 shall be deemed to be unstamped.

In s. 15, the words and figures "section 13 or section 14," have been substituted for the words and figures "section 12 or 13."

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument *by endorsement under the hand of the Collector, or in such other manner (if any) as the Governor-General in Council may by rule prescribe.*

In s. 16, the words italicized are new.

### C.—Of the Time of stamping Instruments.

17. All instruments chargeable with duty, and executed by instruments executed in any person in British India, shall be stamped before or at the time of execution.

18. (1) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque, or promissory note, may be stamped within three months after it has been first received in British India.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, *who* shall stamp the same, in such manner as the Governor-General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

In s. 18 (2), the italicized word *who* has been substituted for *and he*.

**19.** The first holder in British India of any bill of exchange, Bills, cheques, and notes cheque, or promissory note drawn or drawn out of British India. made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers, or otherwise negotiates the same in British India, affix thereto the proper stamp, and cancel the same :

Provided that,—

(a) if, at the time any such bill of *exchange*, cheque, or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person, and at the time, required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled ;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

In the proviso, the italicized words *of exchange* are new, and the italicized figures 12 have been substituted for 11.

#### *D.—Of Valuations for Duty.*

**20.** (1) Where an instrument is chargeable with *ad-valorem* Conversion of amount expressed in foreign currencies. duty in respect of any money expressed in any *currency other than that of British India*, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

(2) *The Governor-General in Council may from time to time, by notification in the "Gazette of India," prescribe a rate of exchange*

for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

S. 19 of the old Act has been omitted. It ran as follows :—  
 "19. Conversion of amount expressed in certain currencies.—Where an instrument is chargeable with *ad-valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs, or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale :—

"One pound sterling or pound currency is equivalent to ten rupees :  
 "One hundred francs are equivalent to forty rupees :

"One Mexican or China dollar is equivalent to two rupees four annas."  
 In s. 20 (1), the italicized words in lines 3 and 4 have been substituted for the words "other foreign or colonial currency."

21. Where an instrument is chargeable with *ad-valorem* duty Stock and marketable securities how to be valued.  
 calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

22. Where an instrument contains a statement of current Effect of statement of rate of exchange or average price, as in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Where interest is expressly made payable by the terms Instruments reserving in- of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

23A.\* (1) Where an instrument Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.— (not being a promissory note or bill of exchange)—

(a) is given upon the occasion of the deposit of any market-able security by way of security for money advanced



or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly-stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (b) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

**24.** Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money, or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad-valorem* duty :

*Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in article 18 of Schedule I.*

*Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :*

*Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.*

#### *Illustrations,*

(1.) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000 : Stamp-duty is payable on Rs. 1,500.

(2.) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest Rs. 200 : Stamp-duty is payable on Rs. 1,700.

(3.) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A : Stamp-duty is payable on Rs. 10,000, less the amount of stamp-duty already paid for the mortgage.

In s. 24, the italicized portion (including the *illustrations*) is new.

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, or the consideration for such conveyance (as the case may be) shall, for the purposes of this Act, be deemed to be—

(a) where the sum is payable for a definite period, so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum is payable in perpetuity, or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years *calculated from the date on which the first payment becomes due*; and

(c) Where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the *maximum* amount which will or may be payable as aforesaid during the period of twelve years *calculated from the date on which the first payment becomes due*.

In cls. (b) and (c), the italicized words, *calculated from the date on which the first payment becomes due*, have been substituted for the words, 'next after the date of such instrument or conveyance;' while, in cl. (c), the italicized word *maximum* has been substituted for the word "total."

26. Where the amount or value of the subject-matter of any Stamp where value of sub-instrument chargeable with *ad-valorem* duty cannot be or (in the case of an instrument executed before the commencement of this Act) could not have been ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:

\* "Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of

\* This *Proviso* has been substituted for the original first proviso by Act XV. of 1904, s. 4.

the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease."

*Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.*

In s. 26, the italicized words, *the commencement of this Act*, have been substituted for the words, "this Act comes into force;" and the two provisos are new.

**27.** The consideration, if any, and all other facts and circum-

Facts affecting duty to be set forth in instrument.      stances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

**23. (1)** Where any property has been contracted to be sold

Direction as to duty in case of certain conveyances.      for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, *provided* that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad-valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad-valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad-valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole or any part thereof to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad-valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad-valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall, in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad-valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

### *E.—Duty by whom payable?*

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

Duties by whom payable.

(a) in the case of any instrument described in any of the following articles of Schedule I, namely—

\* "No. 6 (*Agreement relating to Deposit of Title-deeds, Pawn, or Pledge*),"

No. 13 (*Bill of Exchange*),

No. 15 (*Bond*),

No. 16 (*Bollomry Bond*),

No. 26 (*Customs Bond*),

No. 27 (*Debenture*),

No. 32 (*Further Charge*),

No. 34 (*Indemnity Bond*),

No. 40 (*Mortgage-deed*),

No. 49 (*Promissory Note*),

No. 55 (*Release*),

No. 56 (*Respondentia Bond*),

No. 57 (*Security Bond or Mortgage-deed*),

No. 58 (*Settlement*),

No. 62(a) (*Transfer of Shares in an Incorporated Company or other body corporate*),

(b) (*Transfer of Debentures being Marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8*),

(c) (*Transfer of any Interest secured by a Bond, Mortgage-deed, or Policy of Insurance*),

by the person drawing, making, or executing such instrument :

†(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the Insurance :

†(bb) in the case of a policy of fire-insurance—by the person issuing the policy :

(c) in the case of a conveyance (*including a re-conveyance of mortgaged property*)—by the grantee ; in the case of a lease or agreement to lease—by the lessee or intended lessee :

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\* These words and figure have been substituted for the original by Act XV. of 1904, s. 5.

† Cls. (b) and (bb) have been substituted in place of the original cl. (b) by Act V. of 1906, s. 4.

(d) in the case of a counterpart of a lease—by the lessor :  
 (e) in the case of an instrument of exchange—by the parties  
 in equal shares :

(f) in the case of a certificate of sale—by the purchaser of  
 the property to which such certificate relates ; and

(g) in the case of an instrument of partition—by the parties  
 thereto in proportion to their respective shares in the  
*whole* property *partitioned*, or, when the partition is  
 made in execution of an order passed by a Revenue-  
 authority, or *Civil Court*, or *arbitrator*, in such pro-  
 portion as such authority, *Court*, or *arbitrator* directs.

In s. 29, cl. (a) has been substituted for the original, which was as  
 follows : “ (a) in the case of any instrument described in numbers 2, 11, 13,  
 14, 15, 24, 28, 29, 30, 41, 53, 54, 55, 57, and 60 (a) and (b) of the First  
 Schedule, by the person drawing, making, or executing such instrument ”

In cl. (c), the italicized words are new.

In cl. (g), the italicized word *whole* is new, and the italicized word  
*partitioned* has been substituted for *comprised therein*, and the remaining  
 italicized words have been added.

30. Any person receiving any money exceeding twenty rupees  
 in amount, or any bill of exchange, cheque, or promissory note, for an amount  
 exceeding twenty rupees, or receiving in satisfaction, or *part-satis-  
 faction*, of a debt, any moveable property exceeding twenty rupees in  
 value, shall, on demand by the person paying or delivering such  
 money, bill, cheque, note, or property, give a duly-stamped receipt  
 for the same.

“ Any person receiving or taking credit for any premium or  
 consideration for any renewal of any contract of fire-insurance,  
 shall, within one month after receiving or taking credit for such  
 premium or consideration, give a duly-stamped receipt for the  
 same.”\*

In s 30, the italicized words, or *part-satisfaction*, are new.

\* This para. has been added by Act V. of 1906, s. 5.

## CHAPTER III.

### ADJUDICATION AS TO STAMPS.

**31. (1)** When any instrument, whether executed or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees, and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) *For this purpose, the Collector may* require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Proved that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty *which* he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

The italicized words in s. 31 (2) have been substituted for the words, "and may for this purpose;" and the italicized word *which* in cl. (b) of the proviso is new.

**32. (1)** When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and—  
Certificate by Collector.

(a) the Collector determines that it is already fully stamped,  
or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify, by endorsement on such instrument, that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be, and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped: *Provided that* nothing in this section shall authorize the Collector to endorse—

(a) any instrument executed or first executed in British India, and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of British India, and brought to him after the expiration of three months after it has been first received in British India; or

(c) any instrument chargeable with the duty of one anna, "or half an anna,"\* or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

In cl. (b) of s. 32 (1), the italicized figures 31 have been substituted for the figures "30;" and the italicized words *provided that* in the proviso have been newly added.

It being unnecessary now, the old s. 32 has here been omitted. It ran as follows:—

"32. *Payment of fees under section 30 how made.*—Every payment of a fee under section 30 shall be made in stamps or cash as the Governor-General in Council may by rule direct."

\* These words have been inserted by Act V. of 1906, s. 3.



## CHAPTER IV.

## INSTRUMENTS NOT DULY STAMPED.

**33.** (1) Every person having, by law or consent of parties, authority to receive evidence, and every Examination and impounding of instruments. person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable, and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, *if he does not think fit so to do*, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898;\*

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

(a) *the Governor-General in Council may determine what offices shall be deemed to be public offices, and*

(b) the Local Government may determine who shall be deemed to be persons in charge of public offices.

In cl. (a) of the proviso to s. 33 (2), the italicized words are new.

**34.** *Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of*  
Special provision as to unstamped receipts.

\* Act V. of 1898.

any public account, such officer may, in his discretion, instead of mounding the instrument, require a duly-stamped receipt to be substituted therefor.

**35.** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person, or by any public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument not being an instrument chargeable with a duty of one anna only "or half anna," or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt, and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of and in certain criminal proceedings in any proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898:

\* These words have been added by Act V. of 1906, s. 3.

† Act V. of 1898.

(e) *nothing herein contained shall prevent the admission of and when executed by, or any instrument in any on behalf of, Government. Court when such instrument has been executed by, or on behalf of, the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

36. *Where* an instrument has been admitted in evidence, such Admission of instrument *admission shall not, except as provided where not to be questioned. in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.*

In s. 36, the italicized word *where* has been substituted for *when*, and the italicized figures *61* have been substituted for *50*.

37. *The Governor-General in Council may make rules providing that where an instrument bears a stamp of sufficient amount, but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.*

38. (1) When the person impounding an instrument under Instruments impounded how section 33 has, by law or consent of dealt with. parties, authority to receive evidence, and admits such instrument in evidence upon payment of a penalty as provided by section 35, *or of duty as provided by section 37*, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in his behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

In s. 38 (1), the Italicized figures and words have been substituted for the figures "34."

39. (1) When a copy of an instrument is sent to the Collector Collector's power to refund under section 38, sub-section (1), he may, penalty paid under section 38, if he thinks fit, upon application made sub-section (1). to him in this behalf, *or of no application is made, with the consent of the Chief Controlling Revenue authority,*

refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may refund the whole penalty so paid.

In s. 39, sub-s. (1), line 1, the italicized word *the* has been substituted for the letter "a," the italicized words and figures, section 38, sub-section (1), have been substituted for the words and figures, "the first paragraph of section 35," and the other italics have been newly added; while the italicized figures 13 and 14 in sub-s. (2) have been substituted for the figures "12" and "13" respectively, and the italicized words, *the Collector*, have been substituted for the word "he."

40. (1) When the Collector impounds any instrument under Collector's power to stamp section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty of one anna "or half an anna" \* only, or a bill of exchange or promissory note, he shall adopt the following procedure:—

(a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be.

(b) If he is of opinion that such instrument is chargeable with duty, and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, "an amount not exceeding"† ten times the amount of the proper duty, or of the deficient portion thereof, whichever such amount exceeds or falls short of five rupees:

In s. 40 (1), the italicized words and figures have been substituted for the words and figures, "the second clause of section 35."

In cl. (b), the italicized word *he* has been substituted for the words "the Collector," the italicized words *he thinks fit* are new; and the ten words last italicized have been substituted for the words, "exceeds five rupees, then such penalty, not less than five rupees, and not more than ten times the amount of such duty or portion, as he thinks fit."

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or

\* These words have been inserted by Act V. of 1906, s. 3.  
† These words have been inserted by Act XV. of 1904, s. 6.

section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

"13" and "14" substituted for "12" and "13" respectively.

(2) Every certificate under clause (a) of *sub-section (1)* shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

*Sub-section (1)* substituted for "this section."

The last para of the old s. 37 (now s. 40) has been omitted here. It was as follows: "Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note."

(3) *Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.*

**41** If any instrument chargeable with duty, and not duly stamped, *not being an instrument chargeable with a duty of one anna "or half an anna" only, or a bill of exchange or promissory note*, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake, or urgent necessity, he may, instead of proceeding under sections 33 and 40, receive such amount, and proceed as next hereinafter prescribed.

"Which is" after first "and" in line 1 of s. 41 omitted, the italics newly inserted; and 40 substituted for "37."

**42. (1)** When the duty and penalty (if any) leviable in respect of any instrument have been paid under section 35, section 40, or section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon, that the proper duty or, as the case may be, the pro-

per duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under section 35 shall be so delivered before the expiration of one month from the date of such impounding, or, if the Collector has certified that his further detention is necessary, and has not cancelled such certificate :

(b) nothing in this section shall affect the Code of Civil Procedure,\* section 144, clause 3.

" 35 " " 40 " and " 41 " substituted for " 34 " " 37 " and " 38," respectively.

48. *The taking of proceedings or the payment of a penalty* Prosecution for offence under this chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument :

The words first italicized are new, and the word next italicized substituted for " and."

*Provided that* no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

*Provided that* substituted for " But,"

44. (1) When any duty or penalty has been paid under section 35, section 37, section 40, or section 41, by any person in respect of an instrument, and, by agreement, or under certain cases.

the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under *this Act* shall be conclusive evidence of the matters therein certified.

(3) *Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties, and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable.*

In s. 44, sub-s. (1), the italicized figures 35 have been substituted for 34 and the italicized words and figures, *section 40, or section 41*, have been substituted for the words and figures, "or section 38;" and, in sub-s. (2), the italicized words, *this Act*, have been substituted for the words, and figures "section 29."

45. (1) *Where* any penalty is paid under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) *Where, in the opinion of the Chief Controlling Revenue-authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.*

In s. 45 (1), the italicized word *Where* have been substituted for "When," and the figures and words, 35 or section 40, have been substituted for "34 or 37."

46. (1) If any instrument sent to the Collector under section 38, sub-section (2), is lost, destroyed, or damaged during transmission, the person sending the same shall not be liable for such loss, destruction, or damage.

(2) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such

Non-liability for loss of instruments sent under section 38.  
Copy may be made of instruments so sent.

first-mentioned person, and authenticated by the person impounding such instrument.

In s. 46 (1), the italicised word *the* has been substituted for the letter *a*, and the other italicized words and figures have been substituted for the words and figures, "the second paragraph of section 35, be."

47. When any bill of exchange, promissory note, or cheque, chargeable with the duty of one anna, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinafore provided, may pay the sum payable upon such bill, note, or cheque, and may charge the duty against the person who ought to have paid, the same, or deduct it from the sum payable as aforesaid, and such bill, note, or cheque shall, so far as respects the duty, be deemed good and valid :

The opening words of the section were : "When any bill of exchange or promissory note chargeable," &c.

*Provided that* nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill, note, or cheque.

The italicized words, *Provided that*, have been substituted for, "But," and the next italicized words substituted for "he may have incurred."

48. All duties, penalties, and other sums required to be paid Recovery of duties and under this Chapter may be recovered by the Collector by distress and sale of the mortgagable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

## CHAPTER V.

### ALLOWANCES FOR STAMPS IN CERTAIN CASES.

49. Subject to such rules as may be made by the Governor-General for spoiled stamps, to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance



for impressed stamps spoiled in the cases hereinafter mentioned, namely—

The italicized words have been substituted for the words, "which the Collector may require, allowance shall be made by the Collector."

- (a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated, or, by *error in writing or any other* means, rendered unfit for the purpose intended before any instrument written thereon is executed by any person :

The italics are newly inserted.

- (b) *the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto :*
- (c) *in the case of bills of exchange, cheques, or promissory notes—*
- (1) *the stamp on any bill of exchange or cheque signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever, or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon ;*

The italicized words have been substituted for the words, "The stamp used or intended to be used for any bill of exchange, cheque, or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or any way negotiated, issued, or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and "

- (2) *the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever, or delivered out of his hands ;*
- (3) the stamp used or intended to be used for any bill of exchange, cheque, or promissory note signed by, or on behalf of, the drawer thereof, but which, from any omission or error, has been spoiled or

rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee: provided that another completed and duly-stamped bill of exchange, cheque, or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque, or note:

(d) the stamp used for an instrument executed by any party *thereto which*—

The words, "any of the following instruments, that is to say," after "for," have been omitted, and the italicized word *which* substituted for "but."

(1) *has been* afterwards found to be absolutely void in law from the beginning;

The words, *has been*, have been inserted; and the words, "by a competent Court," after the word "found," have been omitted.

(2) *has been* afterwards found unfit, by reason of any error or mistake therein for the purpose originally intended;

(3) by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed:

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete, and sufficient for the purpose for which it was intended;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be *thereby secured*, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose;

- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument *between the same parties, and bearing a stamp of not less value;*

The italicized words have been substituted for "duly stamped."

- (7) *is deficient in value, and the transaction intended to be thereby effected has been effected by some other instrument between the same parties, and bearing a stamp of not less value;*

- (8) is inadvertently and undesignedly spoiled, and, in lieu whereof, another instrument, made between the same parties, and for the same purpose, is executed and duly stamped:

*Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence, and that the instrument is given up to be cancelled.*

The above proviso has been substituted for the two provisos to s 51. of the old Act. They were as follow:—

"Provided that, in the case of an executed instrument—

- (a) such instrument is given up to be cancelled;
- (b) the application for relief is made within six months after the date of the instrument; or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and, in that case, within six months after the date of execution of the substituted instrument; and except where the spoiled instrument has been sent out of British India, and, in that case, within six months after it has been received back in British India:

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

*Explanation.—The certificate of the Collector under section 32, that the full duty with which an instrument is chargeable has been paid, is an impressed stamp within the meaning of this section.*

Application for relief under section 49 when to be made.

**50.** The application for relief under section 49 must be made within the following periods, that is to say:—

(1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument;

(2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;

(3) in the case of a stamped paper on which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed;

Provided that—

(a) when the spoiled instrument has been, for sufficient reasons, sent out of British India, the application may be made within six months after it has been received back in British India;

(b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

51. The Chief Controlling Revenue-authority may, without Allowance in case of printed forms no longer required by Corporations. *corporate, or other body corporate, if for any sufficient reason, such forms have ceased to be required by the said "banker,"* company, or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

52. (a) When any person has inadvertently used, for an instrument Allowance for misused stamps. *description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or*

\* In s. 51, the words quoted have been inserted by Act V. of 1906, s. 6.

(b) when any stamp used for an instrument has been inadvertently rendered useless under section 15, owing to such instrument having been written in contravention of the provisions of section 13,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

The italicized figures 15 and 13 in cl. (b) have been substituted for "14" and "12," respectively.

Allowance for spoiled or misused stamps how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value, or,
- (b) if required, and he thinks fit, stamps of any other description to the same amount in value, or,
- (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

54. When any person is possessed of a stamp or stamps

which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction—

- (a) that such stamp or stamps were purchased by such person with a bona-fide intention to use them, and
- (b) that he has paid the full price thereof, and
- (c) that they were so purchased within the period of six months next preceding the date on which they were so delivered :

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

(2) If any Collector, acting under section 31, section 40, or section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue-authority.

(3) Such authority shall consider the case, and send a copy of its decision to the Collector, *who* shall proceed to assess and charge the duty (if any) in conformity with such decision.

In s. 56 (2), the italicized figures 31, 40, and 41 have been substituted for the figures, "30" "37" and "38" respectively; and, in cl. (3), the word "And" before the words "Such authority" has been omitted, and the italicized word *who* substituted for the words "and he"

**57. (1)** The Chief Controlling Revenue-authority may state any case referred to it under section 56, *sub-section* (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon—

*Statement of case by chief Controlling Revenue-authority to High Court or Chief Court.*

(a) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be :

(b) if it arises in the North-Western Provinces or Oudh or in Ajmere—to the High Court of Judicature for the North-Western Provinces :

(c) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab or in British Baluchistan—to the Chief Court of the Punjab :

(d) if it arises in the Central Provinces—to the High Court of Judicature at Bombay :

"(1) if it arises in Burma—to the Chief Court of Lower Burma :"\*

(e) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(2) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred,

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\* The sentence under quotation has been inserted by the Lower Burma Courts Act (VI. of 1903), Sch. 1., Pt. 1.

and, in case of difference, the opinion of the majority shall prevail.

In s. 57 (1) the italicized figures and word, 56 sub-section (2), have been substituted for the figures "45."

In cl. (b) of s. 57 (1) the italicized words "*or in Ajmere*, and, in cl (c), the words *or in British Baluchistan*, are new.

**58.** If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated to make such additions thereto, or alterations therein, as the Court may direct in that behalf.

**59.** (1) The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) *The Court* shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

In s. 59 (2) the italicized words. *The Court* have been substituted for the words "and it," the old section not being divided into two clauses as here.

**60.** (1) If any Court other than a Court mentioned in section 57 feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to section 35, the Judge may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section 57 and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the *Chief Controlling Revenue-authority*, and another like copy to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under *sub-section (1)*, when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

In s. 60, the italicized figures, 57 and 35 (wherever they occur), have been substituted for "45" and "34," respectively ; while the italicized letter in parenthesis is new.

In sub-s. (2), the word " And " before the words, " Such Court," has been omitted ; while the italicized words are new.

In sub-s. (3), the italicized expression, *sub-section (1)* has been substituted for the words " this section."

**61. (1)** When any Court, in the exercise of its civil or revenue jurisdiction, or any Criminal Court in Revision of certain decisions of Courts regarding the sufficiency of stamps. *any proceeding under Chapter XII, or Chapter XXXVI. of the Code of Criminal Procedure, 1898\** makes any order admitting any instrument in evidence as duly stamped, or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such order into consideration.

(2) *If such Court, after such consideration*, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and a penalty under section 35, or without the payment of a higher duty and penalty than those paid, *it* may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under *sub-section (2)*, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp law which the Col-

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\* Act V. of 1898.



lector considers him to have committed in respect of such instrument :

Provided that—

- (a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector unless he thinks that the offence was committed with an intention of evading payment of the proper duty :
- (b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

In s. 61 (1), the italicized words are new, and the italicized figures 35 have been substituted for "34" throughout the section.

In sub-s (2), the words first italicized have been substituted for the words "if it," and the italicized word *it* is new.

In sub-s (3), the italicized word and figure, *sub-section (2)*, have been substituted for "this section."

In sub-s. (4), the italicized figures 42 and 43 have been substituted for "39" and "40," respectively.

In the proviso, the italicized figures 35 in cl. (a) and 42 in cl. (b) have been substituted for "34" and "39," respectively.

## CHAPTER VII.

### CRIMINAL OFFENCES AND PROCEDURE.

#### 62. (1) Any person—

(a) drawing, making, issuing, endorsing, or transferring or Penalty for executing, etc., signing otherwise than as a witness, or instrument not duly stamped. presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating, any bill of exchange, cheque, or promissory note without the same being duly stamped, or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, or

(c) voting or attempting to vote under any proxy not duly stamped.

shall, for every such offence, be *punishable* with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40, or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument, upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be *punishable with fine which may extend to five hundred rupees*.

In s. 62, the italicized word *punishable* have been substituted for *punished* ; and the italicized figures 35, 40, and 61 in the proviso have been substituted for the figures " 34 " " 37," and " 50," respectively.

**63.** Any person required by section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be *punishable* with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

**64.** Any person who, with intent to defraud the Government,—

(a) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, or

(c) *does any other act calculated to deprive the Government of any duty or penalty under this Act,*

shall be *punishable* with fine which may extend to five thousand rupees.

In s. 64, the words, " of any duty," after the word " Government," have been omitted ; the italicized word *or* at the end of cl. (b) has been added ; cl. (c) has been newly inserted, the italicized word *punishable* being substituted for " punished." Throughout the penal clauses, *punishable* has been substituted for *punished*.

**65. Any person who—**

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| <p>Penalty for refusal to give receipt, and for devices to evade duty on receipts.</p> | <p>(a) being required under section 30 to give a receipt, refuses or neglects to give the same, or,</p> |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|

- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be *punishable* with fine which may extend to one hundred rupees.

**66. Any person who—**

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|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(a) receives, or takes credit for, any premium or consideration for any contract of policy or making one not duly stamped.</p> | <p>Penalty for not making out insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly-stamped policy of such insurance, or</p> |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

- (b) makes, executes, or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be *punishable* with fine which may extend to two hundred rupees.

**67. Any person drawing or executing a bill of exchange or**

<p>Penalty for not drawing full number of bills or marine policies purporting to be in sets.</p>	<p>a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped</p>
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the whole number of bills or policies of which such bill or policy purports the set to consist, shall be *punishable* with fine which may extend to one thousand rupees.

**68. Any person who,—**

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|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <p>(a) with intent to defraud the Government of duty, draws</p> | <p>Penalty for post-dating makes, or issues any bill of exchange or promissory note bearing a date subse-</p> |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|

quent to that on which such bill or note is actually drawn or made; *or*,

(b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same; *or*,

(c) with the like intent, practises or is concerned in any act, for other devices to defraud the revenue. contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be *punishable* with fine which may extend to one thousand rupees.

In s. 68, the italicized words, *Any person who*, have been substituted for the word "Whoever" and the italicized word *or* at the end of both the cls. (a) and (b), has been substituted for the words, "and whoever."

Penalty for breach of rule relating to sale of stamps and for unauthorized sale. 69. (a) Any person appointed to sell stamps who disobeys any rule made under section 74, and

(b) any person not so appointed who sells or offers for sale any stamp (*other than a one-anna or half an anna*\* *adhesive stamp*),

shall be *punishable* with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

In s. 69, the italicized figures 74 have been substituted for "55," and the italicized words have been added.

70. (1) No prosecution in respect of any offence punishable Institution and conduct of under this Act or any Act *hereby* repealed prosecutions. shall be instituted without the sanction of the Collector or such other officer as the Local Government generally or the Collector specially authorizes in that behalf.

(2) The Chief Controlling Revenue-authority, or any officer *generally or specially* authorized by it in this behalf, may stay any such prosecution, or compound any such offence.

(3) *The amount of any such composition shall be recoverable in the manner provided by section 48.*

In s. 70, sub-s (1), the words "or the General Stamp Act, 1869."† after the word "Act" first occurring, have been omitted, and the italicized

\* These words have been inserted by Act V. of 1906, s. 3.

† Act XVIII. of 1869.

78. Every Local Government shall *make provision for the* Act to be translated and *sale of translations of this Act* in the sold cheaply. principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

The italicized words in the above section have been substituted for the words, "cause this Act to be carefully translated into," and the following words have been omitted after the words "administered by it": "A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public."

79. *The Acts mentioned in Schedule II. are repealed to*  
Repeal. *the extent specified in the fourth column*  
*thereof.*

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## SCHEDULE I.\*

## STAMP-DUTY ON INSTRUMENTS.

(See section 3.)

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book), or on a separate piece of paper, when such book or paper is left in the creditor's possession: <i>provided that such acknowledgment does not contain any promise to pay the debt, or any stipulation to pay interest, or to deliver any goods or other property</i> ... ..</p>	<p>One anna.</p>
<p>2. ADMINISTRATION-BOND, including a bond given under section 256 of the Indian Succession Act, 1865,† section 6 of the Government Savings Banks Act, 1873,‡ section 78 of the Probate and Administration Act, 1881 § or section 9 or section 10 of the Succession Certificate Act, 1889  —</p> <p>(a) <i>where the amount does not exceed Rs. 1,000 :</i></p> <p>(b) <i>in any other case</i> ...</p>	<p>The same duty as a bond (No. 15) for such amount.</p> <p>Five rupees.</p>

\* All additions to, and modifications of, the Schedules in the old Act (1879), are in italics.

† Act X. of 1865.

‡ Act V. of 1873.

§ Act V. of 1881.

|| Act VII. of 1889.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>3. ADOPTION-DEED</b> , <i>that is to say, any instrument (other than a will) recording an adoption, or conferring, or purporting to confer, an authority to adopt</i> ... ..	Ten rupees.
<b>ADVOCATE.</b> <i>See ENTRY AS AN ADVOCATE (No. 30).</i>	
<b>4 AFFIDAVIT</b> , <i>including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing</i> ...	One rupee.
<i>Exemptions :</i>	
<b>Affidavit or declaration in writing when made—</b>	
(a) as a condition of enlistment under the Indian Articles of War ;*	
(b) for the immediate purpose of being filed or used in any Court, or before the officer of any Court ; or	
(c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>5.* AGREEMENT OR MEMORANDUM OF AN AGREEMENT—</b>	
(a) if relating to the sale of a bill of exchange ... ..	Two annas.
(b) if relating to the sale of a Government security or share in an incorporated Company or other body corporate ;	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.
(c) if not otherwise provided for ... ..	Eight annas.
<i>Exemptions :</i>	
<b>Agreement or Memorandum of Agreement—</b>	
(a) for or relating to the sale of goods or merchandise exclusively, not being a NOTE or MEMORANDUM chargeable under No. 43 ;	
(b) made in the form of tenders to the Government of India for or relating to any loan ;	
(c) made under the European Vagrancy Act, 1874,† section 17.	
<b>AGREEMENT TO LEASE. See LEASE (No. 35).</b>	

\* The present Article No. 5 has been substituted for the original Article No. 5 by Act VI. of 1910.

† Act IX. of 1874.



SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>6.* AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN, OR PLEDGE, that is to say, any instrument evidencing an agreement relating to—</p>	
<p>(1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security), or</p>	
<p>(2) the pawn or pledge of moveable property,</p>	
<p>where such deposit, pawn, or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan or an existing or future debt—</p>	
<p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement :</p>	<p>The same duty as a Bill of Exchange [ No. 13 (b) ] for the amount secured.</p>
<p>(b) if such loan or debt is repayable not more than three months from the date of such instrument.</p>	<p>Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.</p>
<p><i>Exemption :</i></p>	
<p>Instrument of pawn or pledge of goods if unattested.</p>	
<p>7. APPOINTMENT IN EXECUTION OF A POWER whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will ... ..</p>	<p>Fifteen rupees.</p>

\* Art. 6 has been substituted for the original by Act XV. of 1904, s. 8.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p><b>APPRAISEMENT OR VALU- ATION</b> made otherwise than under an order of the Court in the course of a suit—</p> <p>(a) <i>where the amount does not ex- ceed Rs. 1,000.</i></p> <p>(b) <i>in any other case</i>      ...      ...</p> <p><i>Exemptions :</i></p> <p>(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory be- tween parties, either by agree- ment or operation of law.</p> <p>(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.</p> <p><b>9. APPRENTICESHIP-DEED</b> in- cluding every writing relating to the service or tuition of any ap- prentice, clerk, or servant, placed with any master to learn any profession, trade, or employment, <i>not being</i> <b>ARTICLES OF CLERKSHIP</b> (No 11)      ...      ...      ...</p> <p><i>Exemption :</i></p> <p>Instruments of apprenticeship executed by a Magistrate under <i>the Apprentices</i> <i>Act, 1850.*</i> or by which a person is apprenticed by or at the charge of any public charity.</p>	<p>The same duty as a <i>Bond</i> (No. 15) for such amount.</p> <p><i>Five rupees.</i></p> <p><i>Five rupees.</i></p>

\* Act XIX. of 1850. The former words were, "under Act XIX. of 1850." The "Apprentices Act, 1850," is the short title of Act XIX. of 1850.—See the Indian Short Titles Act (XIV. of 1897).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPERTY STAMP-DUTY.
<b>10. ARTICLES OF ASSOCIATION OF A COMPANY.</b>	Twenty-five rupees.
<i>Exemption:</i>	
<i>Articles of any Association not formed for profit, and registered under section 26 of the Indian Companies Act, 1882.*</i>	
<i>See also MEMORANDUM OF ASSOCIATION OF A COMPANY (No. 39).</i>	
<b>11. ARTICLES OF CLERKSHIP</b> or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court      ...      ...      ...	Two hundred and fifty rupees.
<b>ASSIGNMENT.</b> <i>See CONVEYANCE (No 23), TRANSFER (No 62), and TRANSFER OF LEASE (No. 63), as the case may be.</i>	
<b>ATTORNEY.</b> <i>See ENTRY AS AN ATTORNEY (No 30) and POWER-OF-ATTORNEY (No. 48).</i>	
<b>AUTHORITY TO ADOPT.</b> <i>See ADOPTION-DEED (No. 3).</i>	

\* Act VI. of 1882.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>12. AWARD</b> , that is to say, any decision in writing by an arbitrator or umpire, <i>not being an award directing a partition</i> , on a reference made otherwise than by an order of the Court in the course of a suit—	
(a) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 :	The same duty as a Bond (No. 15) for such amount.
(b) in any other case      ...      ...	Five rupees.
<i>Exemption :</i>	
<b>Award under the Bombay District Municipal Act, 1873,* section 81, or the Bombay Hereditary Offices Act, 1874,† section 18.</b>	
<b>13. BILL OF EXCHANGE</b> [ <i>as defined by s. 2 (2) &amp; (3)</i> ] not being a BOND, bank-note, or currency-note—	
(a) where payable on demand      ...	One anna.

\* Bom. Act VI. of 1873.

† Bom. Act III. of 1874.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.			
13. BILL OF EXCHANGE.— <i>contd.</i>				If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
(b)* where payable otherwise than on demand, but not more than one year after date or sight—					
	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
if the amount of the bill or note does not exceed	200	0 2 0	0 1 0	0 1 0	0 1 0
if it exceeds Rs. 200 and does not exceed	400	0 4 0	0 2 0	0 2 0	0 2 0
Do. 400 do. 600		0 6 0	0 3 0	0 2 0	0 2 0
Do. 600 do. 1,000		0 12 0	0 6 0	0 4 0	0 4 0
Do. 1,000 do. 1,200		1 2 0	0 9 0	0 6 0	0 6 0
Do. 1,200 do. 1,600		1 8 0	0 12 0	0 8 0	0 8 0
Do. 1,600 do. 2,500		2 4 0	1 2 0	0 12 0	0 12 0
Do. 2,500 do. 5,000		4 8 0	2 4 0	1 8 0	1 8 0
Do. 5,000 do. 7,500		6 12 0	3 6 0	2 4 0	2 4 0
Do. 7,500 do. 10,000		9 0 0	3 8 0	3 0 0	3 0 0
Do. 10,000 do. 15,000		13 8 0	6 12 0	4 8 0	4 8 0
Do. 15,000 do. 20,000		18 0 0	9 0 0	6 0 0	6 0 0
Do. 20,000 do. 25,000		22 8 0	11 4 0	7 8 0	7 8 0
Do. 25,000 do. 30,000		27 0 0	13 8 0	9 0 0	9 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000...		9 0 0	4 8 0	3 0 0	3 0 0

\* Cl. (b) of Art. No. 13 has been re-enacted by Act VI. of 1910.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
13. BILL OF EXCHANGE— <i>contd.</i>	
(c) <i>where payable at more than one year after date or sight</i> ...	The same duty as a Bond (No. 15) for the same amount.
14. BILL OF LADING ( <i>including a through bill of lading</i> ) ...	Four annas.
<p>N. B.—If a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.</p> <p><i>Exemptions :</i></p> <p>(a) Bill of lading when the goods therein described are received at a place within the limits of any ports as defined under the Indian Ports Act, 1889,* and are to be delivered at another place within the limits of the same port.</p> <p>(b) <i>Bill of lading when executed out of British India, and relating to property to be delivered in British India.</i></p>	
15. BOND [ <i>as defined by section 2 (5) not being a DEBENTURE (No. 27) and not being otherwise provided for by this Act or by the Court Fees Act, 1870†—</i>	

\* Act X. of 1889.

† Act VII. of 1870.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>15. BOND—<i>contd.</i></b>	
<i>where the amount or value secured does not exceed Rs. 10 ... ..</i>	Two annas.
<i>where it exceeds Rs. 10, and does not exceed Rs. 50 ... ..</i>	Four annas.
Do. 50 do. 100 ...	Eight annas.
Do. 100 do. 200 ...	One rupee.
Do. 200 do. 300 ...	One rupee eight annas.
Do. 300 do. 400 ...	Two rupees.
Do. 400 do. 500 ...	Two rupees eight annas.
Do. 500 do. 600 ...	Three rupees.
Do. 600 do. 700 ...	Three rupees eight annas.
Do. 700 do. 800 ...	Four rupees.
Do. 800 do. 900 ...	Four rupees eight annas.
Do. 900 do. 1,000 ...	Five rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000 ... ..	Two rupees eight annas.
See ADMINISTRATION-BOND (No. 2), BOTTOMRY-BOND (No. 16), CUSTOMS-BOND (No. 26), INDEMNITY-BOND (No. 34), RESPONDENTIA-BOND (No. 56), SECURITY-BOND (No. 57).	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p><b>15. BOND—<i>concl'd.</i></b></p> <p><i>Exemptions :</i></p> <p>Bond, when executed by—</p> <p>(a) headmen nominated under rules framed in accordance with the Bengal <i>Irrigation</i> Act, 1876.* section 99, for the due performance of their duties under that Act,</p> <p>(b) any person for the purpose of guaranteeing that the local income derived from private subscriptions to charitable dispensary or hospital, or any other object of public utility, shall not be less than a specified sum per mensem.</p>	
<p><b>16. BOTTOMRY-BOND,</b> that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship, or prosecute her voyage ...</p>	<p>The same duty as a Bond (No. 15) for the same amount.</p>
<p><b>17. CANCELLATION—INSTRUMENT</b> OF (<i>including any instrument by which any instrument previously executed is cancelled</i>), if attested and not otherwise provided for ... ..</p>	<p>Five rupees.</p>

\* Ben. Act III. of 1876.



SCHEDULE 1.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>17. CANCELLATION—<i>contd.</i></b>	
<i>See also</i> RELEASE (No. 55), REVOCATION OF SETTLEMENT (No. 58B), SURRENDER OF LEASE (No. 61), REVOCATION OF TRUST (No. 64B).	
<b>18. CERTIFICATE OF SALE</b> ( <i>in respect of each property put up as a separate lot and sold</i> ) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue-officer—	
(a) <i>where the purchase-money does not exceed Rs. 10...</i> ...	<i>Two annas.</i>
(b) <i>where the purchase-money exceeds Rs. 10, but does not exceed Rs. 25</i> ...	<i>Four annas</i>
(c) <i>in any other case</i> ...	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.
<b>19. CERTIFICATE OR OTHER DOCUMENT</b> evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip, or stock in or of any <i>incorporated company or other body corporate</i> , or to become proprietor of shares, scrip, or stock in or of any <i>such Company or body</i> ...	<i>One anna.</i>

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>19. CERTIFICATE OR OTHER DOCUMENT—<i>contd.</i></p> <p><i>See also</i> LETTER OF ALLOTMENT OF SHARES (No. 36).</p>	
<p>20. CHARTER-PARTY, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer, <i>whether it includes a penalty clause or not</i> ... ..</p>	<p>One rupee.</p>
<p>21 CHEQUE [<i>as defined by section 2 (7)</i>]... ..</p>	<p>One anna.</p>
<p>22. COMPOSITION-DEED, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors or whereby provision is made for the continuance of the debtor's business under the supervision of inspectors, or under letters of license, for the benefit of his creditors. ... ..</p>	<p>Ten rupees.</p>
<p>23. CONVEYANCE [<i>as defined by section 2 (10)</i>], not being a TRANSFER, charged or exempted under No. 62—</p>	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
<b>23. CONVEYANCE—<i>contd.</i></b>	
<i>where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50      ...      ...      ...</i>	Eight annas.
<i>where it exceeds Rs. 50 but does not exceed Rs. 100</i>	One rupee.
<i>Do.      100 do.      200</i>	Two rupees.
<i>Do.      200 do.      300</i>	Three rupees.
<i>Do.      300 do.      400</i>	Four rupees.
<i>Do.      400 do.      500</i>	Five rupees.
<i>Do.      500 do.      600</i>	Six rupees.
<i>Do.      600 do.      700</i>	Seven rupees.
<i>Do.      700 do.      800</i>	Eight rupees.
<i>Do.      800 do.      900</i>	Nine rupees.
<i>Do.      900 do.      1,000</i>	Ten rupees.
<i>and for every Rs. 500 or part thereof in excess of Rs. 1,000 ...</i>	Five rupees.
<i>Exemption :</i>	
Assignment of copyright by entry made under the Indian Copyright Act, 1847,* section 5.	
<b>CO-PARTNERSHIP-DEED—</b> <i>See PARTNERSHIP (No. 46).</i>	

\* Act XX. of 1847.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>24. COPY OR EXTRACT certified to be a true copy or extract by, or by order of, any public officer, and not chargeable under the law* for the time being in force relating to court fees—</p> <p>(i) if the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ...</p> <p>(ii) in any other case ...</p> <p><i>Exemptions :</i></p> <p>(a) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office, or for any public purpose.</p> <p>“(b)† Copy of, or extract from, any register relating to births, baptisms, namings, dedications, marriages, deaths, or burials.</p>	<p>Eight annas.</p> <p>One rupee:</p>
<p>25. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid—</p> <p>(a) if the duty with which the original instrument is chargeable does not exceed one rupee :</p> <p>(b) in any other case ...</p>	<p>The same duty as is payable on the original.</p> <p>One rupee.</p>

\* Act VII. of 1870.

† This new cl. (b) has been substituted for the original of the *Exemptions* from Art. No. 24. by Act VII. of 1906, s. 7.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP DUTY.
25. COUNTERPART OR DUPLICATE— <i>contd.</i> —	
<i>Exemption :</i>	
Counterpart of any lease granted to a cultivator <i>when such lease is exempted from duty.</i>	
26. CUSTOMS-BOND—	
(a) <i>where the amount does not exceed Rs. 1,000</i> ... ..	The same duty as a Bond (No. 15) for such amount.
(b) <i>in any other case</i> ... ..	Five rupees.
"27* DEBENTURE (whether a mortgage-debenture or not), being a marketable security transferable—	
(a) <i>by endorsement, or by a separate instrument of transfer ;</i>	The same duty as Bond (No. 15) for the same amount.
(b) <i>by delivery</i> ... ..	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the face amount of the debenture.
<i>Explanation</i> —The term 'Debenture' includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.	
<i>Exemption :</i>	
A debenture issued by an incorporated Company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to	

\* Art. 27, as it now stands, has been substituted for the original Art. 27 by Act VI. of 1910.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p><b>27. DEBENTURE—<i>contd.</i></b></p> <p>be issued thereunder, whereby the Company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture holders : provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.</p> <p><i>See also BOND (No 15) and sections 8 and 55.</i></p> <p><b>DECLARATION OF ANY TRUST.—<i>See TRUST (No. 64)</i></b></p> <p><b>28 DELIVERY ORDER IN RESPECT OF GOODS,</b> that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees     ...     ...     ...     ...</p> <p><b>DEPOSIT OF TITLE DEEDS—</b>" <i>See AGREEMENT relating to DEPOSIT OF TITLE-DEEDS, PAWN, or PLEDGE (No. 6)."</i>*</p>	<p>One anna.</p>

\* The words quoted above have been substituted for the words and figure 'See Agreement by way of equitable mortgage (No. 6),' by Act XV. of 1904, s. 8 (2).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>DISSOLUTION OF PARTNER-SHIP.</b> — <i>See</i> PARTNERSHIP (No 46).	One rupee.
29. <b>DIVORCE</b> —Instrument of, that is to say any instrument by which any person effects the dissolution of his marriage ... ..	
<b>DOWER</b> — <i>Instrument of.</i> <i>See</i> SETTLEMENT (No. 58).	
<b>DUPLICATE</b> — <i>See</i> COUNTERPART (No. 25)	
<b>ENTRY AS AN ADVOCATE, VAKIL, OR ATTORNEY ON THE ROLL OF ANY HIGH COURT</b> in exercise of powers conferred on such Court by Letters Patent, or by the Legal Practitioners Act, 1884*—	Five hundred rupees.
(a) in the case of an Advocate or Vakil ... ..	
(b) in the case of an Attorney ...	Two hundred and fifty rupees.
<i>Exemption :</i>	
Entry of an advocate, vakil, or attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
31. <sup>†</sup> <b>EXCHANGE OF PROPERT</b> <sup>†</sup> <sup>†</sup> <b>Y.</b> —INSTRUMENT OF.	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the value of the property of <i>greatest</i> value as set forth in such instrument.

\* Act IX of 1884.

† Here the entry "EQUITABLE MORTGAGE" is omitted by Act XV. of 1904, s. 8. (3)

# SCHEDULE I.—continued.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>EXTRACT.</b> —See COPY (No. 24).	
<b>32. FURTHER CHARGE</b> —Instrument of, that is to say, any instrument imposing a further charge on mortgaged property—	
(a) when the original mortgage is one of the description referred to in clause (a) of article No. 40 (that is, with possession);	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount of the further charge secured by such instrument.
(b) when such mortgage is one of the description referred to in clause (b) of article No. 40 (that is, without possession)—	
(i) if, at the time of execution of the instrument of further charge, possession of the property is given, or agreed to be given, under such instrument;	The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge already made) less the duty already paid on such original mortgage and further charge.
(ii) if possession is not so given...	The same duty as a BOND (No. 15) for the amount of the further charge secured by such instrument.



SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
33. GIFT—Instrument of, <i>not being a SETTLEMENT (No. 58) or Will or Transfer (No. 62).</i>	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
HIRING AGREEMENT <i>or agreement for service—See AGREEMENT (No. 5).</i>	
34. INDEMNITY-BOND ...	The same duty as a SECURITY-BOND (No. 57) <i>for the same amount.</i>
INSPECTORSHIP-DEED. — See COMPOSITION-DEED (No. 22).	
INSURANCE.—See POLICY OF INSURANCE (No. 47).	
35. LEASE, including an under-lease or sub-lease <i>and any agreement to let or sub-let—</i>	
(a) where, by such lease, the rent is fixed, and no premium is paid or delivered—	
(i) <i>where the lease purports to be for a term of less than one year:</i>	The same duty as a BOND (No. 15) <i>for the whole amount payable or deliverable under such lease.</i>

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
35. LEASE— <i>contd.</i>	
(ii) <i>where the lease purports to be for a term of not less than one year, but not more than three years :</i>	The same duty as a BOND (No. 15) for the <i>amount or value of the average annual rent reserved.</i>
(iii) <i>where the lease purports to be for a term in excess of three years :</i>	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
(iv) <i>where the lease does not purport to be for any definite term.</i>	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
(v) <i>where the lease purports to be in perpetuity :</i>	The same duty as a Conveyance No. 23 for a consideration equal to one fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
(b) <i>where the lease is granted for a fine or premium or for money advanced, and where no rent is reserved :</i>	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
35. LEASE— <i>contd.</i>	
(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved ... ..	<p>The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered :</p>
<i>Exemptions :</i>	
(a) Lease executed in the case of a cultivator, and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed, and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees :	<p>Provided that, in any case when an agreement to lease is stamped with the <i>ad-valorem</i> stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>35. LEASE—<i>concl'd.</i></p> <p>(b) leases of fisheries granted under the Burma Fisheries Act, 1875,* or the Upper Burma Land and Revenue Regulation, 1889.†</p>	One anna.
<p>36. LETTER OF ALLOTMENT OF SHARES in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company ... ..</p> <p><i>See also</i> CERTIFICATE OR OTHER DOCUMENT (No. 19).</p>	
<p>37. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn ... ..</p>	
<p>LETTER OF GUARANTEE— <i>See</i> AGREEMENT (No. 5).</p>	One anna.
<p>38. LETTER OF LICENSE that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims, and allow the debtor to carry on business at his own discretion ... ..</p>	
	Ten rupees.

\* Act VII. of 1875.]

† Regulation II. of 1889.

## SCHEDULE 1.—continued.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>41. MORTGAGE OF A CROP,</b> including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether there is or is not in existence at the time of the mortgage—	
(a) when the loan is repayable not more than three months from the date of the instrument—	
for every sum secured not exceeding Rs. 200 ... ..	One anna.
and for every Rs. 100 or part thereof secured in excess of Rs. 200 ...	One anna.
(b) when the loan is repayable more than three months, but not more than "eighteen months,"* from the date of the instrument—	
for every sum secured not exceeding Rs. 100 ... ..	† "Two annas."
* These words have been substituted for the words Y. of 1906, s. 7 (2). † Substituted for "four annas" by s. 8 (5), Act XV	† "one year" by Act of 1904.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p>41. MORTGAGE OF A CROP.— <i>contd.</i></p> <p><i>and for every Rs. 100 or part thereof secured in excess of Rs. 100 ...</i></p>	<p>"Two annas."*</p>
<p>42. NOTARIAL ACT, that is to say, any instrument, endorsement, note, attestation, certificate, or entry <i>not being</i> a PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public ... ..</p> <p><i>See also</i> PROTEST OF BILL OR NOTE (No. 50).</p>	<p>One Rupee,</p>
<p>43.† NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal—</p> <p>(a) of any goods exceeding in value twenty rupees ... ..</p> <p>(b) of any stock or marketable security exceeding in value twenty rupees. ... ..</p>	<p>Two annas.</p> <p>Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the stock or security."</p>
<p>4. NOTE OF PROTEST BY THE MASTER OF A SHIP ... ..</p> <p><i>See also</i> PROTEST BY THE MASTER OF A SHIP (No. 51).</p>	<p>Eight annas.</p>

\* Substituted for "four annas" by s. 8 (5), Act XV. of 1904.

† The present Art. 43 has been substituted for the original by Act VI. of 1910.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>ORDER FOR THE PAYMENT OF MONEY—</b> <i>See BILL OF EXCHANGE (No. 13).</i>	
<b>45. PARTITION—Instrument of [as defined by s. 2 (15)]</b> ... ..	The same duty as a BOND (No. 15) for the amount of the value of the <i>separated share or shares of the property.</i>
<i>N. B.—The largest share remaining after the property is partitioned (or if there are two or more shares of equal value, and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated:</i>	
<i>Provided always that—</i>	
<i>(a) when an instrument of partition containing an agreement to divide property in severalty is executed, and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument, but shall not be less than eight annas ;</i>	
<i>(b) where land is held on Revenue Settlement for a period not exceeding thirty years, and paying the full assessment, the value for the purpose of duty shall be calculated at not more than five times the annual revenue ;</i>	
<i>(c) where a final order for effecting a partition passed by any Revenue authority or any Civil Court, or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition, in pursuance of such order or award, is subsequently executed, the duty on such instrument shall not exceed eight annas.</i>	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
<b>46. PARTNERSHIP—</b>		
A.—INSTRUMENT OF—		
(a) <i>where the capital of the partnership does not exceed Rs. 500...</i>		<i>Two rupees eight annas.</i>
(b) <i>in any other case ...</i>	... Ten rupees.	
B.—DISSOLUTION OF ...	... <i>Five rupees.</i>	
<b>"PAWN OR PLEDGE.—See AGREEMENT RELATING TO DEPOSIT OF TITLE-DEEDS, PAWN, OR PLEDGE (No. 6)."</b> *		
<b>47. POLICY OF INSURANCE—</b>		
	If drawn singly,	If drawn in duplicate, for each part.
"A.†—SEA-INSURANCE ( <i>see</i> section 7)—		
(r) for or upon any voyage—		
(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy ... ..	One anna.	Half an anna.

\* This entry has been inserted by Act XV. of 1904, s. 8 (6).

† In Art. 47, divisions A and B have been substituted for the original by Act V. of 1906, s. 7 (3).



SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
	If drawn singly.	If drawn in duplicate for each part.
<b>47. POLICY OF INSURANCE—</b> <i>contd.</i>		
(ii) in any other case, in respect of every full sum of one thousand rupees and also, any fractional part of one thousand rupees insured by the policy ... ..	Two annas.	One anna.
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—where the insurance shall be made for any time not exceeding six months ...	Do.	Do.
where the insurance shall be made for any time exceeding six months, and not exceeding twelve months ... ..	Four annas.	Two annas.
<b>"B.*—FIRE INSURANCE—</b>		
(1) in respect of an original policy—		
(i) when the sum insured does not exceed Rs. 5,000 ...	Eight annas.	
(ii) in any other case ...	One rupee.	
and		
(2) in respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.	

\* In Art. 47, divisions A and B have been substituted for the original by Act V. of 1906, s. 7 (3).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>47. POLICY OF INSURANCE—</b> <i>contd.</i>	
<b>C.—Accident and Sickness Insurance—</b>	
(a) <i>against railway accident valid for a single journey only ...</i>	One anna.
<i>Exemption :</i>	
<i>When issued to a passenger travelling by the intermediate or the third class in any railway.</i>	
(b) <i>in any other case—for the maximum amount which may become payable in the case of any single accident or sickness where such amount does not exceed Rs. 1,000 and also where such amount exceeds Rs. 1,000, for every Rs. 1,000 or part thereof ...</i>	Two annas.
<b>D.—LIFE INSURANCE or other INSURANCE not specifically provided for; except such a RE-INSURANCE as is described in Division E of this article—</b>	
<i>for every sum insured not exceeding Rs. 1,000, and also for every Rs. 1,000, or part thereof insured in excess of Rs. 1,000—</i>	
(i) <i>if drawn singly ...</i>	Six annas.

## SCHEDULE I.—continued.

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>47. POLICY OF INSURANCE</b> <i>—concl'd.</i>	
(ii) if drawn in duplicate, for each part ...	Three annas.
<i>Exemption.</i>	
<i>Policies of life-insurance granted            by the Director-General of the            Post Office of India in ac-            cordance with rules for Postal            Life Insurance issued under            the authority of the Govern-            ment of India.</i>	
<b>E.—RE-INSURANCE</b> by an Insurance Company which has granted a <b>POLICY OF SEA-INSURANCE</b> or a <b>POLICY OF FIRE-INSURANCE</b> with another Company by way of in- demnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby ...	One-quarter of the duty payable in respect of the original in- surance, but not less than one anna or more than one rupee.
<i>General Exemption.</i>	
(a) Letter of cover or engagement to issue a policy of insurance: Provided that, unless such letter or engagement bears the stamp prescribed by this Act for such policy nothing shall be claimable thereunder, nor shall it be avail- able for any purpose, except to compel the delivery of the policy therein mentioned.	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>48. POWER-OF-ATTORNEY</b> [ <i>as defined by s. 2 (21),</i> ] not being a PROXY (No. 52)—	
(a) when executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction, or for admitting execution of one or more such documents ... ..	Eight annas.
(b) when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882* ... ..	Eight annas.
(c) when authorizing one person or more to act in a single transaction other than the case mentioned in clause (a) ...	One rupee.
(d) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally.	Five rupees.
(e) when authorizing more than five, but not more than ten, persons to act jointly and severally in more than one transaction, or generally ...	Ten rupees.

\* Act XV. of 1882.

STAMP.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>48. POWER-OF-ATTORNEY—</b> <i>contd.</i>	
(f) when given for consideration, and authorizing the attor- ney to sell any immoveable property ...	The same duty as a CONVEYANCE (No. 23) for the amount of the consideration
(g) in any other case ...	One rupee for each person author- ized.
<i>Explanation.</i> —For the purposes of this article, more persons than one, when belonging to the same firm, shall be deemed to be one person.	
<b>49. PROMISSORY NOTE</b> [as de- <i>fined by section 2 (22)]</i> ...	The same duty as a BILL OF EX- CHANGE (No. 13) according as it is payable on demand or pay- able otherwise than on demand, as the case may be.
<b>50. PROTEST OF BILL OR            NOTE</b> , that is to say, any de- claration in writing made by a Notary Public or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ...	One rupee.

\* Act III. of 1877 [but see now the new Registration Act (XVI. of 1908), whereby the Act of 1877, No. III., has been repealed *in toto*].

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p><b>51. PROTEST BY THE MASTER OF A SHIP</b>, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ...</p>	<p><i>One rupee.</i></p>
<p><i>See also</i> NOTE OF PROTEST BY THE MASTER OF A SHIP (<i>No. 44</i>).</p>	
<p><b>52. PROXY</b>, empowering any person to vote at any one <i>election of the members of a District or Local Board, or of a body of Municipal Commissioners</i>, or at any one meeting of (a) Members of an <i>incorporated Company or other body corporate</i> whose stock or funds is or are divided into shares and transferable, (b) a <i>Local Authority</i>, or (c) Proprietors, Members, or Contributors to the funds of any Institution ...</p>	<p><i>One anna.</i></p>
<p><b>53. RECEIPT</b> [<i>as defined by s. 2 (23)</i>] for any money or other property, the amount or value of which exceeds twenty rupees.</p>	<p><i>One anna.</i></p>

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
53. RECEIPT— <i>contd.</i>	
<i>Exemptions :</i>	
Receipt—	
(a) endorsed on, or contained in, any instrument duly stamped, or exempted under <i>the proviso to s. 3 (instruments executed on behalf of the Government)</i> , acknowledging the receipt of the consideration-m o n e y therein expressed, or the receipt of any principal money interest, or annuity, or other periodical payment thereby secured ;	
(b) for any payment of money without consideration ;	
(c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inam lands ;	
(d) for pay <i>or allowances</i> by non-commissioned officers or soldiers of Her Majesty's Army or Her Majesty's Indian Army, when serving in such capacity, <i>or by mounted police-constables ;</i>	

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>53. RECEIPT—<i>contd.</i></b>	
<i>Exemptions—contd :</i>	
(e) given by holders of family-certificates in cases where the person, from whose pay or allowances the sum comprised in the receipt has been assigned, is a non-commissioned officer or soldier of either of the said Armies and serving in such capacity ;	
(f) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non commissioned officers or soldiers, and not serving the Government in any other capacity :	
(g) given by a headman or lambar-dar for land revenue or taxes collected by him ;	
(h) given for money or securities for money deposited in the hands of any banker, to be accounted for ;	
Provided <i>that</i> the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for ;	



SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>53. RECEIPT—concl'd.</b>	
<i>Exemptions—concl'd.</i>	
<p>Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share or in respect of a call upon any scrip or share of or in any <i>incorporated Company or other body corporate, or such proposed or intended Company or body, or in respect of a debenture being a marketable security.</i></p>	
<p>" See also POLICY OF INSURANCE [No. 47, (2).]"*</p>	
<b>54. RE-CONVEYANCE OF MORTGAGED PROPERTY—</b>	
(a) if the consideration for which the property was mortgaged does not exceed Rs. 1,000.	The same duty as a CONVEYANCE (No. 23) for the amount of such consideration as set forth in the Re-conveyance.
(b) in any other case ... ..	Ten rupees.
<b>55. RELEASE</b> , that is to say, any instrument "(not being such a release as is provided for by section 23A)"† whereby a person renounces a claim upon another person, or against any specified property—	

\* This note is added to Art. 53 by Act V. of 1906, s. 7 (4).

† These parenthesised words above quoted are inserted by Act XV. of 1904, s. 8 (7).

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>55. RELEASE—<i>contd.</i></b>	
(a) if the amount or value of the claim does not exceed Rs. 1,000.	The same duty as a BOND (No. 15) for such amount or value as set forth in the Release.
(b) in any other case ... ..	Five rupees.
<b>56. RESPONDENTIA-BOND</b> , that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship, and making repayment contingent on the arrival of the cargo at the port of destination.	The same duty as a BOND (No. 15) for the amount of the loan secured.
<b>REVOCATION OF ANY TRUST OR SETTLEMENT.</b> — <i>See SETTLEMENT (No. 58); TRUST (No. 64).</i>	
<b>57. SECURITY BOND OR MORTGAGE-DEED</b> executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract—	
(a) when the amount secured does not exceed Rs. 1,000.	The same duty as a BOND (No. 15) for the amount secured.
(b) in any other case ... ..	Five rupees.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>57. SECURITY-BOND OR MORTGAGE-DEED—<i>contd.</i></b>	
<i>Exemptions :</i>	
<b>Bond or other instrument, when executed—</b>	
(c) by headmen nominated under rules framed in accordance with the Bengal <i>Irrigation Act</i> , 1876,* section 99, for the due performance of their duties under that Act ;	
(b) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem ;	
(c) under No. 3-A of the Rules made by the Governor of Bombay in Council under section 70 of the <i>Bombay Irrigation Act</i> , 1879 ;†	
(d) executed by persons taking advances under the Land Improvement Loans Act, 1883‡ or the <i>Agriculturists' Loans Act</i> 1884.§ or by their sureties, as security for the repayment of such advances ;	

\* Ben. Act III. of 1876.

† Bom. Act V. of 1879

‡ Act XIX. of 1883.

§ Act XII. of 1884.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<p><b>57. SECURITY BOND OR MORTGAGE-DEED—<i>concl'd.</i></b></p> <p><i>Exemptions—contd.:</i></p> <p>(e) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money or other property received by virtue thereof.</p>	
<p><b>58. SETTLEMENT—</b></p> <p>A—INSTRUMENT of (including a deed of dower) ...</p> <p><i>Exemptions:</i></p> <p>(a) Deed of Dower executed on the occasion of a marriage between Muhammadans;</p> <p>(b) Hludansa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose, in which no value has been specified, and on which a duty of Rs. 10 has been paid.</p>	<p>The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such Settlement:</p> <p><i>Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.</i></p>

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>58. SETTLEMENT</b> — <i>contd.</i>	
<b>B—REVOCATION OF</b> ...     ...     ...  <i>See also TRUST (No. 64).</i>	<i>The same duty as a BOND (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument of Revocation, but not exceeding ten rupees.</i>
<b>59. SHARE-WARRANTS</b> to bear- <i>er issued under the Indian Com-</i> <i>panies Act, 1882*</i> ...     ...	<i>"One and a half times"† the duty payable on a CONVEYANCE (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.</i>
<i>Exemption :</i>	
<i>Share-warrant when issued by a Com-</i> <i>pany in pursuance of the</i> <i>Indian Companies Act, 1882,*</i> <i>section 30, to have effect only</i> <i>upon payment, as composition</i> <i>for that duty, to the Collector</i> <i>of Stamp-revenue, of—</i>	
(a) <i>"one and a half"† per centum</i> <i>of the whole subscribed</i> <i>capital of the Company, or,</i>	
(b) <i>if any Company, which has paid</i> <i>the said duty or composition</i> <i>in full, subsequently issues</i> <i>an addition to its subscribed</i> <i>capital—"one and a half"†</i> <i>per centum of the additional</i> <i>capital so issued.</i>	
<b>SCRIP.</b> — <i>See CERTIFICATE (No. 19).</i>	

\* Act VI. of 1882.

† Substituted for the words "three quarters" by Act VI. of 1910.

SCHEDULE I.—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP DUTY.
<b>60. SHIPPING ORDER</b> for or relating to the conveyance of goods on board of any vessel.	One anna.
<b>61. SURRENDER OF LEASE—</b>	
(a) when the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.
(b) in any other case ... ..	Five rupees.
<i>Exemption :</i>	
Surrender of lease, when such lease is exempted from duty.	
<b>62. TRANSFER—</b>	
(a) of shares in an incorporated Company or other body corporate.	"One half"* of the duty payable on a CONVEYANCE (No. 23) for a consideration equal to the value of the share.
(b) of debentures being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8.	"One half"* of the duty payable on a CONVEYANCE (No. 23) for a consideration equal to the face amount of the debentures.
(c) of any interest secured by a Bond, Mortgage-deed, or Policy of Insurance—	
(i) if the duty on such Bond, Mortgage-deed, or Policy does not exceed five rupees.	The duty with which such Bond, Mortgage-deed, or Policy of Insurance is chargeable.
ii) in any other case ...	Five rupees.
(d) of any property under the Administrator-Generals Act, 1874,† section 31.	Ten rupees.

\* Substituted for "one quarter" by Act VI. of 1910.

† Act II. of 1874.

SCHEDULE I.—*continued*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
<b>62. TRANSFER—<i>contd.</i></b>	
(e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this article.
<i>Exemptions:</i>	
<b>Transfers by endorsement—</b>	
(a) of a bill of exchange, cheque, or promissory note;	
(b) of a bill of lading, <i>delivery order</i> , <i>warrant for goods</i> , or other <i>mercantile document of title to goods</i> ;	
(c) of a policy of insurance;	
(d) of securities of the Government of India.	
<i>See also section 8.</i>	
<b>63. TRANSFER OF LEASE</b> by way of assignment, and not by way of under-lease.	The same duty as a CONVEYANCE (No. 23) for a consideration equal to the amount of the consideration for the Transfer.
<i>Exemption:</i>	
<i>Transfer of any lease exempt from duty.</i>	
<b>64. TRUST—</b>	
<b>A.—DECLARATION OF—</b> of or concerning any property when made by any writing not being a WILL.	The same duty as a BOND (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding fifteen rupees.

SCHEDULE I.—*concluded.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
64. TRUST— <i>contd.</i>	
B.—REVOCATION OF—of or concerning any property <i>when made</i> by any instrument other than a WILL.	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument, but not exceeding ten rupees.
<i>See also</i> SETTLEMENT (No. 58).	
VALUATION.— <i>See</i> APPRAISEMENT (No. 8).	
VAKIL.— <i>See</i> ENTRY AS A VAKIL (No. 30).	
65. WARRANT FOR GOODS, that is to say, any instrument evidencing the title of any person therein named, or his assigns or the holder thereof, to the property in any goods lying in or upon any dock, warehouse, or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be. ... ..	Four annas.



## SCHEDULE II.\*

## ENACTMENTS REPEALED.

(See section 79.)

No.	Year.	Short title.	Extent of repeal.
I.	1879 ..	<i>The Indian Stamp Act, 1879.</i>	<i>The whole.</i>
VI.	1882 ...	<i>Indian Companies Act, 1882.</i>	<i>Section 35.</i>
IX.	1884 ...	<i>The Legal Practitioners Act, 1884.</i>	<i>Section 10.</i>
I.	1888 ...	<i>The Indian Stamp Act (1879) Amendment Act 1888.</i>	<i>The whole.</i>
V.	" ...	<i>The Inventions and Designs Act, 1888.</i>	<i>So much of the First Schedule as relates to the Indian Stamp Act, 1879 (I. of 1879).</i>
XVIII.	" ...	<i>The Burma Financial Commissioners Act, 1888.</i>	<i>So much of the Schedule as relates to the Indian Stamp Act, 1879 (I. of 1879).</i>
VI.	1889 ...	<i>The Probate and Administration Act, 1889.</i>	<i>Sub-sections (3) and (4) of section 18.</i>
XX.	1890 ...	<i>The North-Western Provinces and Oudh Act, 1890.</i>	<i>So much of section 38 as relates to the Indian Stamp Act, 1879 (I. of 1879).</i>
XII.	1891 ...	<i>The Repealing and Amending Act, 1891.</i>	<i>So much of part I. of the First and Second Schedules as relates to the Indian Stamp Act, 1879 (I. of 1879).</i>
VI.	1894 ...	<i>The Indian Stamp Act (1879) Amendment Act, 1894</i>	<i>The whole.</i>
XIII.	1897 ...	<i>The Indian Stamp Act (1879) Amendment Act, 1897.</i>	<i>The whole.</i>

\* Newly inserted.

THE  
INDIAN SUCCESSION ACT, 1865,  
BEING ACT NO. X. OF 1865,  
*AS AMENDED UP TO DECEMBER, 1913.*

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BY  
D. E. CRANENBURGH,  
*PLEADER.*

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1913.

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3 TO 5, BOW STREET.

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# ACT NO. X. OF 1865:

## The Indian Succession Act, 1865.

### ARRANGEMENT OF SECTIONS.

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##### SECTIONS.

1. Short title.
2. Act to constitute law of British India in cases of intestate or testamentary succession.
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8. Domicile of origin of illegitimate child.
9. Continuance of domicile of origin.
10. Acquisition of new domicile.
11. Special mode of acquiring domicile in British India.
12. Domicile not acquired by residence as representative of foreign Government, or as part of his family.
13. Continuance of new domicile.
14. Minor's domicile.

##### SECTIONS.

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19. Succession to moveable property in British India in absence of proof of domicile elsewhere.

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22. Collateral consanguinity.
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37. Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister living :  
38. Where intestate's father dead, and his mother and children of any deceased brother or sister living :  
39. Where intestate's father dead, but his mother living, and no brother, sister, nephew, or niece :

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41. Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister.  
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58. Effect of obliteration, interlineation, or alteration in unprivileged will.
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62. Inquiries to determine questions as to object or subject of will.
63. Misnomer or misdescription of object.
64. When words may be supplied.
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- [66. When part of description may not be rejected as erroneous.
67. Extrinsic evidence admissible in case of latent ambiguity.
68. Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.
69. Meaning of clause to be collected from entire will.
70. When words may be understood in restricted sense, and when in sense wider than usual.
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75. The last of two inconsistent clauses prevails.
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77. Words describing subject refer to property answering description at testator's death.
78. Power of appointment executed by general bequest.
79. Implied gift to objects of power in default of appointment.
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81. Bequest to "representatives," &c., of particular person.
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83. Bequest in alternative.
84. Effect of words describing a class added to bequest to a person.
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86. Construction of terms.
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88. Rules of construction where will purports to make two bequests to same person.
89. Constitution of residuary legatee.
90. Property to which residuary legatee entitled.
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93. Legacy does not lapse if one of two joint legatees die before testator.
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## SECTIONS.

95. When lapsed share goes as undisposed of.
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97. Bequest to A for benefit of B does not lapse by A's death.
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106. Date of vesting of legacy when payment or possession postponed.
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110. One of two separate and independent bequests to some person may be accepted, and the other refused.

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111. Bequest contingent upon specified uncertain event no time being mentioned for its occurrence.
112. Bequest to such of certain persons as shall be surviving at some period not specified.

## PART XVI.

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116. Bequest to A and on failure of prior bequest, to B.
117. When second bequest not to take effect on failure of first.
118. Bequest over, conditional upon happening or not happening of specified uncertain event.
119. Condition must be strictly fulfilled.
120. Original bequest not affected by invalidity of second.
121. Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.
122. Such condition must not be invalid under section 107.
123. Result of legatee rendering impossible or indefinitely postponing act for which no time specified, and, on non-performance of which, subject-matter to go over.

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125. Direction that fund be employed in particular manner following absolute bequest of same to or for benefit of any person.  
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128. Legatee named as executor cannot take unless he shows intention to act as executor.

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131. Bequest of stock where testator had, at date of will, equal or greater amount of stock of same kind.  
132. Bequest of money where not payable until part of testator's property disposed of in certain way.  
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142. Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.  
143. Ademption *pro tanto* by testator's receipt of portion of entire fund, of which portion has been specifically bequeathed.  
144. Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.  
145. Ademption where stock specifically bequeathed does not exist at testator's death.  
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147. Non-ademption of specific bequest of goods described as connected with certain place by reason of removal.
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150. Change by operation of law of subject of specific bequest between date of will and testator's death.
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157. Exoneration of specific legatee's stock in Joint Stock Company.

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OF BEQUESTS OF THE INTERESTS OF  
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162. Abatement of annuity.
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- 172. Person taking in individual capacity under will may, in other character, elect to take in opposition.
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- 186. Accrual of representation to surviving executor.
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- 188. Effect of probate.
- 189. To whom administration may not be granted.
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- 191. Effect of letters of administration.
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- 193. Grant of administration where executor has not renounced. Exception.
- 194. Form and effect of renunciation of executorship.
- 195. Procedure where executor renounces or fails to accept within time limited.
- 196. Grant of administration to universal or residuary legatee.
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- 200. Order in which connections-entitled to administer.
- 201. Administration to widow unless Court see cause to exclude her.
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 215. Administration during minority of sole executor or residuary legatee.  
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 220. Administration with will annexed limited to particular purpose.  
 221. Administration limited to property in which person has beneficial interest.  
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240. When probate or administration may be granted by District Judge
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- 

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- 

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322. When legatee, not satisfied or compelled to refund under section 321, cannot oblige one paid in full to refund.
323. When unsatisfied legatee must first proceed against executor, if solvent.
324. Limit to refunding of one legatee to another.
325. Refunding to be without interest.
326. Residue after usual payments to be paid to residuary legatee.
- 326A. Transfer of assets from British India to executor or administrator in country of domicile for distribution,
- 

## SECTIONS.

## PART XL.

## OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

327. Liability of executor or administrator for devastation.
328. Liability of executor for neglect to get in any part of property.

## PART XLI.

## MISCELLANEOUS.

329. } [Repealed.]  
330. }
331. Succession to property of Hindus, &c., and certain wills, intestacies, and marriages not affected.
332. Power of Governor-General in Council to exempt any race, sect, or tribe in British India from operation of Act.
333. Surrender of revoked probate or letter of administration.

## SCHEDULE—[Repealed.]

# ACT NO. X. OF 1865:\*

## The Indian Succession Act, 1865.

RECEIVED THE G. G.'S ASSENT ON THE 16TH MARCH 1865.

*An Act to amend and define the Law of Intestate and Testamentary Succession in British India.*

Preamble. WHEREAS it is expedient to amend and define the rules of law applicable to Intestate and Testamentary Succession in British India; It is enacted as follows:—

### PART I.

#### PRELIMINARY.

Short title.

1. This Act may be cited as "The Indian Succession Act, 1865."

2. Except as provided by this Act, or by any other law for the time being in force, the rules herein contained shall constitute the law of British India applicable to all cases of intestate or testamentary succession.†

\* Act X. of 1865 has been declared in force in—

(1) the Santhal Parganas (*see* Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886):

(2) the Arakan Hill District, but not so as to affect Native Christians (*see* Reg. IX. of 1874, s. 3):

(3) Upper Burma generally except the Shan States (*see* Act XX. of 1886, s. 6):

(4) British Baluchistan (*see* Reg. I. of 1890, s. 3).

The Act has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

The Districts of Hazaribag, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—*See Gazette of India*, Oct. 22, 1881, Pt. I., p. 504.

The North-Western Provinces Tarai.—*See Gazette of India*, Sep. 23, 1876, Pt. I., p. 505.

As to the application of portions of the Act to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay. *see* the Hindu Wills Act (XXI. of 1870).

As to the exemption of Parsis from portions of the Act, *see* the Parsi Intestate Succession Act (XXI. of 1865). For further exemptions from the Act, *see* ss. 331, 332, *infra*.

† *See* 12 B. L. R. 427.



Interpretation-clause.

3.\* In this Act, unless there be something repugnant in the subject or context,—

Words importing the singular number include the plural;  
 Number. words importing the plural number in-  
 Gender. clude the singular; and words importing  
 the male sex include females:

“Person” includes any company or association, or body  
 of persons, whether incorporated or  
 “Person.” not:

“Year.” “Year” and “month” respectively  
 “Month.” mean a year and month reckoned ac-  
 cording to the British calendar:

“Immoveable property” includes land, incorporeal tenements,  
 and things attached to the earth, or  
 “Immoveable property.” permanently fastened to anything which  
 is attached to the earth:

“Moveable property.” “Moveable property” means pro-  
 perty of every description except im-  
 moveable property:

“Province.” “Province” includes any division  
 of British India having a Court of the  
 last resort:

“British India” means the territories which are or may be-  
 come vested in Her Majesty or Her  
 “British India.” Successors by the Statute 21 & 22 Vict.,  
 cap. 106 (*An Act for the better Government of India*):†

“District Judge.” “District Judge” means the Judge  
 of a principal Civil Court of original  
 jurisdiction:

“Minor”‡ means any person who shall not have completed  
 the age of eighteen years, and “minor-  
 ity” means the status of such person.  
 “Minor.”  
 “Minority.”

\* Compare the Probate and Administration Act (V. of 1881), s. 3.

† Here certain words, repealed by the Repealing Act (XII. of 1891),  
 have been omitted.

‡ See 1 B. L. R., O. C. J., 13, Act IX. of 1875, s. 3.

“Will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death :

“Codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will :

“Probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator :

“Executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided :

“Administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor :

And in every part of British India to which this Act shall extend, “Local Government” shall mean the person authorized by law to administer executive government in such part ; and

“High Court\*” shall mean the highest Civil Court of Appeal therein, *and for the purposes of sections 242, 242A, 246A, and 277A, shall include the Court of the Recorder of Rangoon.*

4. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing  
Interests and powers not acquired nor lost by marriage.

\* The definition of “High Court” has been added by the Probates and Letters of Administration Act (XIII. of 1875), s. 1 ; but the portion italicised has been repealed in Lower Burma by the Lower Burma Courts Act (VI. of 1900).

any act in respect of his or her own property which he or she could have done if unmarried.\*

## PART II.

### OF DOMICILE.

#### 5. Succession to the immovable property in British India of

Law regulating succession to deceased person's immovable and moveable property respectively.

a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

#### *Illustrations.*

(a.) A, having his domicile in British India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immovable, in British India: The succession to the whole is regulated by the law of British India.

(b.) A, an Englishman, having his domicile in France, dies in British India, and leaves property, both moveable and immovable, in British India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of British India.

One domicile only affects succession to moveables.

6. A person can only have one domicile for the purpose of succession to his moveable property.

#### 7. The domicile of origin of every person of legitimate birth

Domicile of origin of person of legitimate birth.

is in the country in which, at the time of his birth, his father was domiciled: or,

if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

\* See 8 B. L. R. 372. "This section shall not apply, and shall be deemed never to have applied, to any marriage, one or both of the parties to which professed, at the time of the marriage, the Hindu, Mahomedan, Buddhist, Sikh, or Jaina religion."—Married Women's Property Act (III. of 1874), s. 2, last para.

*Illustration.*

At the time of the birth of A, his father was domiciled in England: A's domicile of origin is in England, whatever may be the country in which he was born.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

*Explanation.*—A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

*Illustrations.*

(a.) A, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life: His domicile is now in British India.

(b.) A, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service: A has acquired a domicile in Austria.

(c.) A, whose domicile of origin is in France, comes to reside in British India under an engagement with the British Indian Government for a certain number of years. It is his intention to return to France at the end of that period: He does not acquire a domicile in British India.

(d.) A, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished: He does not by such residence, acquire a domicile in British India however long the residence may last.

(e.) A, having gone to reside in British India under the circumstance mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India: A has acquired a domicile in British India.

(f.) A, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in

Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore: He does not, by such residence, acquire a domicile in British India.

(g.) A, having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent: A has acquired a domicile in British India.

**11.** Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration.

**12.** A person who is appointed by the Government of one country to be its ambassador, consul, or other representative in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family or as a servant.

**13.** A new domicile continues until the former domicile has been resumed, or another has been acquired.

**14.** The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

*Exception.*—The domicile of a minor does not change with that of his parent if the minor is married, or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

**15.** By marriage a woman acquires the domicile of her husband if she had not the same domicile before.

**16.** The wife's domicile during marriage follows the domicile of her husband.

*Exception.*—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

17. Except in the cases above provided for, a person cannot acquire a new domicile. Minor's acquisition of not, during minority, acquire a new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person. Lunatic's acquisition of new domicile.

19. If a man dies leaving moveable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India. Succession to moveable property in British India in absence of proof of domicile elsewhere.

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### PART III.\*

#### OF CONSANGUINITY.

20. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor. Kindred or consanguinity.

21. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather, and great-grandfather, and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line. Lineal consanguinity.

Every generation constitutes a degree, either ascending or descending.

A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

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\* Part III. does not apply to Parsis.—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

**22.** Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

**23.** For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother ;

nor between those who are related to him by the full blood and those who are related to him by the half-blood ;

nor between those who were actually born in his lifetime and those who, at the date of his death, were only conceived in the womb, but who have been subsequently born alive.

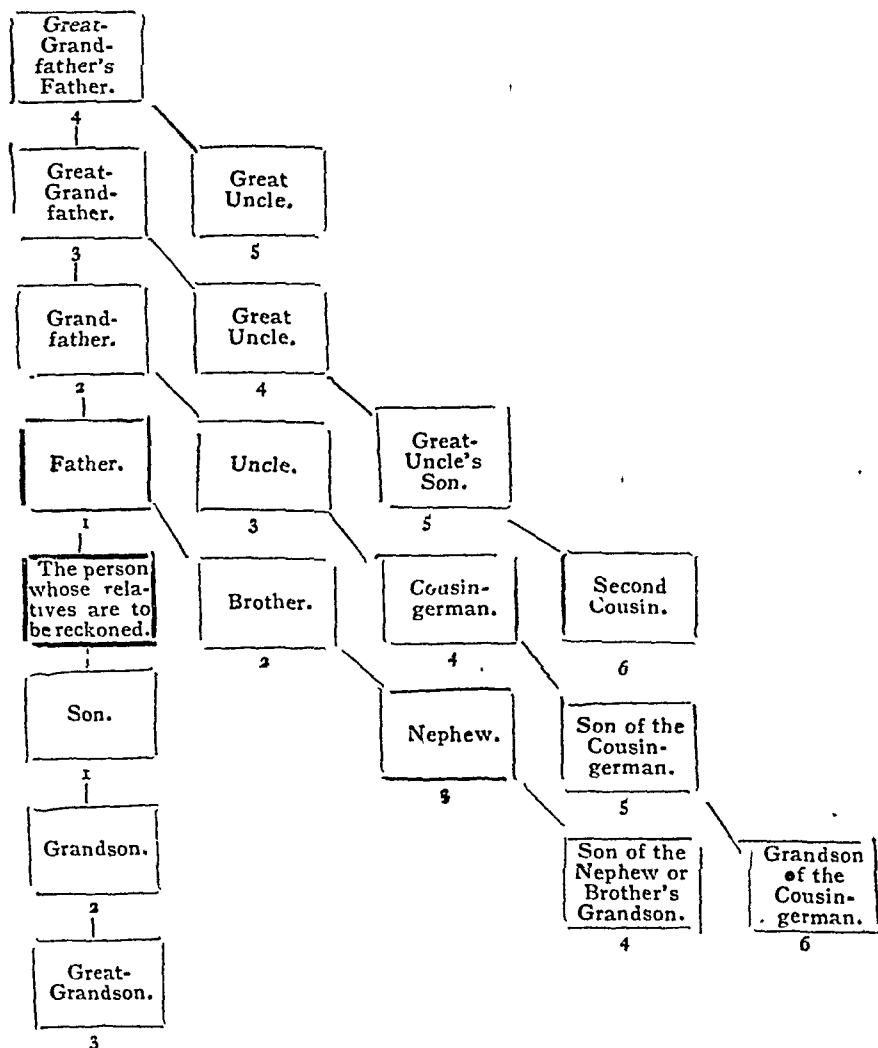
**24.** In the annexed table of kindred, the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin-german or first cousin, are, as shown in the table, related in the fourth degree ; there being one degree of ascent to the father and another to the common ancestor. the grandfather ; and from him one of descent to the uncle, and another to the cousin-german ; making in all four degrees.

A grandson of the brother and a son of the uncle, *i. e.*, a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

A grandson of a cousin-german is in the same degree as the grandson of a great-uncle, for they are both in the sixth degree of kindred.

# TABLE OF CONSANGUINITY.





## PART IV.\*

## OF INTESTACY.

**25.** A man is considered to die intestate in respect of all pro-

As to what property deceased considered to have died intestate.

perty of which he has not made a testamentary disposition which is capable of taking effect.

*Illustrations.*

(a.) A has left no will ; He has died intestate in respect of the whole of his property.

(b.) A has left a will, whereby he has appointed B his executor ; but the will contains no other provisions ; A has died intestate in respect of the distribution of his property.

(c.) A has bequeathed his whole property for an illegal purpose : A has died intestate in respect of the distribution of his property.

(d.) A has bequeathed 1,000*l.* to B and 1,000*l.* to the eldest son of C, and has made no other bequest ; and has died leaving the sum of 2,000*l.* and no other property. C died before A without having ever had a son : A has died intestate in respect of the distribution of 1,000*l.*

**26.** Such property devolves upon the wife or husband, or upon

Devolution of such property.

those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

*Explanation.*—The widow is not entitled to the provision hereby made for her if, by a valid contract made before her marriage, she has been excluded from the distributive share of her husband's estate :

**27.** Where the intestate has left a widow, if he has also left

Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.

any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants. according to the rules herein contained.

If he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow,

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\* Part IV. (excepting s. 25) does not apply to Parsis.—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

and the other half shall go to those who are of kindred to him in the order and according to the rules herein contained.

If he has left none who are of kindred to him, the whole of his property shall belong to his widow :

**28.** Where the intestate has left no widow, his property shall

Where intestate has left no widow, and where he has left no kindred.

go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained ; and, if he has left none who are of kindred to him, it shall go to the Crown.

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## PART V\*

### OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY :

(a.)—*Where he has left Lineal Descendants.*

**29.** The rules for the distribution of the intestate's property  
 Rules of distribution : (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follow :—

**30.** Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there be only one, or shall be equally divided among all his surviving children.

**31.** Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

#### *Illustrations.*

(a.) A has three children, and no more—John, Mary, and Henry. They all die before the father, John leaving two children, Mary three, and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grandchild : Each of his grandchildren shall have one-ninth.

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\* Part V. does not apply to Parsis.—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

(b.) But, if Henry has died leaving no child, then the whole is equally divided between the intestate's five grandchildren—the children of John and Mary.

(c.) A has two children, and no more—John and Mary. John dies before his father, leaving his wife pregnant. Then A dies, leaving Mary surviving him, and in due time a child of John is born. A's property is to be equally divided between Mary and such posthumous child.

**32.** In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

**33.** If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and

one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and

one of such shares shall be allotted in respect of each of such deceased lineal descendants; and

the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

#### *Illustrations.*

(a.) A had three children, John, Mary and Henry. John died leaving four children, and Mary died leaving one, and Henry alone survived the father: On the death of A intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(b.) A left no child, but left eight grandchildren, and two children of a deceased grandchild: The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great-grandchildren.

(c.) A has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A afterwards dies intestate: One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

*(b).—Where the Intestate has left no Lineal Descendants.*

**34.** Where an intestate has left no lineal descendants, the

Rules of distribution where intestate has left no lineal descendants:

rules for the distribution of his property (after deducting the widow's share if he has left a widow) are as follow:—

Where intestate's father living,

**35.** If the intestate's father be living, he shall succeed to the property.

**36.** If the intestate's father is dead, but the intestate's mother

Where intestate's father dead, but his mother, brothers, and sisters living:

is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

*Illustration.*

A dies intestate survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother, but not of his father: The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half-blood, takes one-fourth.

**37.** If the intestate's father is dead, but the intestate's mother

Where intestate's father dead, and his mother, a brother or sister, and children of any deceased brother or sister, living:

is living, and if any brother or sister, and the child or children of any brother or sister who may have died in the intestate's lifetime, are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A, the intestate, leaves his mother, his brothers, John and Henry, and also one child of a deceased sister Mary, and two children of George, a deceased brother of the half-blood, who was the son of his father, but not of his mother : The mother takes one-fifth, John and Henry each take one-fifth, the child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth equally between them.

**38.** If the intestate's father is dead, but the intestate's mother

Where intestate's father is living, and the brothers and sisters dead, and his mother and are all dead, but all or any of them children of any deceased have left children who survived the brother or sister living : intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

*Illustration.*

A, the intestate, leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary, and two children of a deceased brother George : The mother takes one-third, the child of Mary takes one-third, and the children of George divide the remaining one-third equally between them.

**39.** If the intestate's father is dead, but the intestate's mother

Where intestate's father is living, and there is neither brother dead, but his mother living, nor sister nor child of any brother or and no brother, sister, sister of the intestate, the property shall nephew, or niece : belong to the mother.

**40.** Where the intestate has left neither lineal descendant,

Where intestate has left nor father, nor mother, the property is neither lineal descendant, nor divided equally between his brothers father, nor mother : and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

**41.** If the intestate left neither lineal descendant, nor parent,

Where intestate has left nor brother, nor sister, his property neither lineal descendant, shall be divided equally among those nor parent, nor brother, of his relatives who are in the nearest nor sister : degree of kindred to him.

*Illustrations.*

(a.) A, the intestate, has left a grandfather and a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They, being in the second degree, will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(b.) A, the intestate, has left a great-grandfather or great-grandmother and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him: All of these, being in the third degree, shall take equal shares.

(c.) A, the intestate, left a great-grandfather, and uncle and a nephew, but no relative standing in a nearer degree of kindred to him: All of these, being in the third degree, shall take equal shares.

(d.) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

**42.** Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given, or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

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## PART VI.

### OF THE EFFECT OF MARRIAGE AND MARRIAGE SETTLEMENTS ON PROPERTY.

**43\*** The husband surviving his wife has the same rights in respect of her property if she die intestate as the widow has in respect of her husband's property if he die intestate.

**44.** If a person whose domicile is not in British India marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party not com-

Effect of marriage between person domiciled, and one not domiciled, in British India.

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\* S. 43 does not apply to Parsis—See the Parsi Intestate Succession Act (XXI. of 1865), s. 8.

prised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

**45.** The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor with the approbation of the minor's father, or if he be dead or absent from British India, with the approbation of the High Court.

Settlement of minor's property in contemplation of marriage.

## PART VII.\*

### OF WILLS AND CODICILS.

Persons capable of making wills.

**46.** Every person of sound mind and not a minor may dispose of his property by will.

*Explanation 1.*—A married woman may dispose by will of any property which she could alienate by her own act during her life.

*Explanation 2.*—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for making a will if they are able to know what they do by it.

*Explanation 3.*—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

*Explanation 4.*—No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness from any other cause, that he does not know what he is doing.

#### *Illustrations.*

(a.) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will: A cannot make a valid will.

(b.) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(c.) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will: This is a valid will.

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\* Of Part VII., ss. 46, 48, and 49 apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

**47.** A father, whatever his age may be, may, by will, appoint a guardian or guardians for his child during minority.  
 Testamentary guardian.

**48.** A will or any part of a will, the making of which has been obtained by fraud, coercion, or importunity, caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

*Illustrations.*

(a.) A falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a will in his (A's) favour; such will has been obtained by fraud, and is invalid.

(b.) A, by fraud and deception, prevails upon the testator to bequeath a legacy to him: The bequest is void.

(c.) A, being a prisoner by lawful authority, makes his will: The will is not invalid by reason of the imprisonment.

(d.) A threatens to shoot B, or to burn his house, or to cause him to be arrested on a criminal charge unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C: The bequest is void, the making of it having been caused by coercion.

(e.) A being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet, being so much under the control of B that he is not a free agent, makes a will dictated by B. It appears that he would not have executed the will but for fear of B: The will is invalid.

(f.) A, being in so feeble a state of health as to be unable to resist importunity, is pressed by B to make a will of a certain purport, and does so merely to purchase peace, and in submission to B: The will is invalid.

(g.) A being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. A, in consequence of the intercession, and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by B. The will is not rendered invalid by the intercession and persuasion of B.

(h.) A, with a view to obtaining a legacy from B, pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to A: The bequest is not rendered invalid by the attention and flattery of A.

**49.** A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.  
 Will may be revoked or altered.



## PART VIII.\*

## OF THE EXECUTION OF UNPRIVILEGED WILLS.

50. Every testator, not being a soldier employed in an expedition or engaged in actual warfare or a mariner at sea, must execute his will according to the following rules:—

*First.*—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

*Second.*—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

*Third.*—The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator,† but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

51. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such documents shall be considered as forming a part of the will or codicil in which it is referred to.

## PART IX. ‡

## OF PRIVILEGED WILLS.

52. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has completed the age

Privileged will.

\* Part VIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870) s. 2.

† 3 N.-W. P. 35.

of eighteen years, dispose of his property by a will made as is mentioned in section 53.

Such wills are called privileged wills.

*Illustrations.*

(a.) A, the surgeon of a regiment, is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged will.

(b.) A is at sea in a merchant-ship, of which he is the purser. He is a mariner, and, being at sea, can make a privileged will.

(c.) A a soldier, serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged will.

(d.) A, a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged will.

(e.) A, an admiral who commands a naval force but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged will.

(f.) A mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged will.

Mode of making, and rules for executing, privileged wills. **53.** Privileged wills may be in writing, or may be made by word of mouth.

The execution of them shall be governed by the following rules:—

*First.*—The will may be written wholly by the testator with his own hand. In such case it need not be signed nor attested.

*Second.*—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

*Third.*—If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will if it be shown that it was written by the testator's directions, or that he recognized it as his will.

If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not, by reason of that circumstance, be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

*Fourth.*—If the soldier or mariner shall have written instructions for the preparation of his will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his will.

*Fifth.*—If the soldier or mariner shall, in the presence of two witnesses, have given verbal instructions for the preparation of his will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

*Sixth.*—Such soldier or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

*Seventh.*—A will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will.

## PART X.\*

### OF THE ATTESTATION, REVOCATION, ALTERATION, AND REVIVAL OF WILLS.

54. A will shall not be considered as insufficiently attested by Effect of gift to attesting reason of any benefit thereby given, either witness. by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband;

but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

*Explanation.*—A legatee under a will does not lose his legacy by attesting a codicil which confirms the will.

55. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness not disqualified by interest or by being executor. witness to prove the execution of the will, or to prove the validity or invalidity thereof.

\* Of Part X., ss. 55 and 57 to 60 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

**56.** Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

*Explanation.*—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

**57.** No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

#### *Illustrations.*

(a.) A has made an unprivileged will. Afterwards A makes another unprivileged will which purports to revoke the first. This is a revocation.

(b.) A has made an unprivileged will. Afterwards A, being entitled to make a privileged will, makes a privileged will, which purports to revoke his unprivileged will. This is a revocation.

**58.** No obliteration, interlineation, or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or some other part of the will.

**59.** A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to

revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

*Explanation.*—In order to the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should, at the time of doing that act, be in a situation which entitles him to make a privileged will.

**60.** No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same ;

and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

## PART XI.\*

### OF THE CONSTRUCTION OF WILLS.

**61.** It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

**62.** For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a Court must enquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circum-

\* Of Part XI., ss. 61-77 (both inclusive), 82, 83, 85, and 88 to 98 (both inclusive), apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

stances of the testator and of his family, and into every fact, a knowledge of which may conduce to the right application of the words which the testator has used.

### *Illustrations.*

(a.) A, by his will, bequeaths 1,000 rupees to his eldest son,\* or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the will applies.

(b.) A, by his will, leaves to B "his estate called Black Acre." It may be necessary to take evidence in order to ascertain what is the subject-matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(c.) A, by his will, leaves to B, "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

**63.** Where the words used in the will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

### *Illustrations.*

(a) A bequeaths a legacy "to Thomas, the second son\* of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(b.) A bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, whose first son is named Thomas, and whose second son is named William. Thomas shall have the legacy.

(c.) The testator bequeaths his property "to A and B, the legitimate children of C." C has no legitimate child, but has two illegitimate children, A and B. The bequest to A and B takes effect, although they are illegitimate.

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\* In applying ss. 62, 63, 92, 96, 98, 99, 100, 101, 102, and 103 of the said Succession Act to wills and codicils made under this Act (XXI. of 1870), the words, "son," "sons," "child," and "children," shall be deemed to include an adopted child; and the word "grandchildren" shall be deemed to include the children, whether adopted or natural-born, of a child whether adopted or natural-born; and the expression, "daughter-in-law" shall be deemed to include the wife of an adopted son.—Hindu Wills Act (XXI. of 1870), s. 6.

(d.) The testator gives his residuary estate to be divided among "his seven children,"\* and, proceeding to enumerate them, mentions six names only. The omission shall not prevent the seventh child from taking a share with the others.

(e.) The testator, having six grandchildren,\* makes a bequest to "his six grandchildren," and, proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(f.) The testator bequeaths "1,000 rupees to each of the three children\* of A." At the date of the will, A has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

**64.** Where any word material to the full expression of the meaning has been omitted, it may be supplied.

*Illustration.*

The testator gives a legacy of "five hundred" to his daughter A, and a legacy of "five hundred rupees" to his daughter B. A shall take a legacy of five hundred rupees.

**65.** If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some particulars in description of subject. parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

*Illustrations.*

(a.) A bequeaths to B, "his marsh-lands lying in L, and in the occupation of X." The testator had marsh-lands lying in L, but has no marsh-lands in the occupation of X. The words "in the occupation of X" shall be rejected as erroneous, and the marsh-lands of the testator lying in L shall pass by the bequest.

(b.) The testator bequeaths to A "his zemindary of Rampur." He had an estate at Rampur, but it was a taluq, and not a zemindari. The taluq passes by this bequest.

**66.** If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such pro-

\* See the Hindu Wills Act (XXI. of 1870), s. 6 (reproduced at footnote of p. 23, *supra*.)

perty, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

*Explanation.*—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 65 are to be considered as struck out of the will.

#### *Illustrations.*

(a.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X" the testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The bequest shall be considered as limited to such of the testator's marsh-lands lying in L as were in the occupation of X.

(b.) A bequeaths to B "his marsh-lands lying in L, and in the occupation of X, comprising 1,000 bighas of land." The testator had marsh-lands lying in L, some of which were in the occupation of X, and some not in the occupation of X. The measurement is wholly inapplicable to the marsh-lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the will, and such of the testator's marsh-lands lying in L as were in the occupation of X shall alone pass by the bequest.

**67.** Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

#### *Illustrations.*

(a.) A man, having two cousins of the name of Mary, bequeaths a sum of money to "his cousin Mary." It appears that there are two persons, each answering the description in the will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(b.) A, by his will, leaves to B "his estate called Sultanpur Khurd." It turns out that he had two estates called Sultanpur Khurd : Evidence is admissible to show which estate was intended.

**68.** Where there is an ambiguity or deficiency on the face of the will, no extrinsic evidence as to the intentions of the testator shall be admitted.

*Extrinsic evidence inadmissible in cases of patent ambiguity or deficiency.*



*Illustrations.*

(a.) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards, bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under section 76.

(b.) A bequeaths 1,000 rupees to \_\_\_\_\_, leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(c.) A bequeaths to B \_\_\_\_\_ rupees, or "his estate of \_\_\_\_\_." Evidence is not admissible to show what sum or what estate the testator intended to insert.

### 69. The meaning of any clause in a will is to be collected

Meaning of clause to be collected from the entire instrument, and all its collected from entire will. \_\_\_\_\_ parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

*Illustrations.*

(a.) The testator gives to B a specific fund or property at the death of A, and, by a subsequent clause, gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his decease in B; it appearing from the bequest to B that the testator meant to use, in a restricted sense, the words in which he describes what he gives to A.

(b.) Where a testator, having an estate, one part of which is called Black Acre, bequeaths the whole of his estate to A, and in another part of his will bequeaths Black Acre to B, the latter bequest is to be read as an exception out of the first, as if he had said "I give Black Acre to B, and all the rest of my estate to A."

### 70. General words may be understood in a restricted sense

When words may be understood in restricted sense, and when in wider sense. \_\_\_\_\_ where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

*Illustrations.*

(a.) A testator gives to A "his farm in the occupation of B," and to C "all his marsh-lands in L." Part of the farm in the occupation of B consists of marsh-lands in L, and the testator also has other marsh-lands in

L. The general words, "all his marsh-lands in L," are restricted by the gift to A. A takes the whole of the farm in the occupation of B, including that portion of the farm which consists of marsh-lands in L.

(b.) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A (a ship-mate) his red box, clasp-knife, and all things not before bequeathed. The testator's share in a house does not pass to A under this bequest.

(c.) A, by his will, bequeathed to B all his house-hold furniture plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B a specified part of his property. Under the first bequest, B is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

**71.** Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

**72.** No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

**73.** If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

**74.** The intention of the testator is not to be set aside, because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

#### *Illustration.*

The testator, by a will made on his death-bed, bequeathed all his property to C D for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under section 105, but it shall take effect so far as regards the gift to C D.

**75.** Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

#### *Illustrations.*

(a.) The testator, by the first clause of his will leaves his estate of Ramnagar "to A," and, by the last clause of his will, leaves it "to B, and not to A." B shall have it,

(b.) If a man, at the commencement of his will, gives his house to A. and at the close of it directs that his house shall be sold, and the proceeds invested for the benefit of B, the latter disposition shall prevail.

Will or bequest void for uncertainty.

**76.** A will or bequest not expressive of any definite intention is void for uncertainty.

*Illustration.*

If a testator says, "I bequeath goods to A;" or "I bequeath to A;" or "I leave to A all the goods mentioned in a schedule," and no schedule is found; or, "I bequeath 'money,' 'wheat,' 'oil,' " or the like, without saying how much, this is void.

**77.** The description contained in a will of property, the subject of gift, shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.

Words describing subject refer to property answering description at testator's death.

**78.** Unless a contrary intention shall appear by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power;

and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

**79.** Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made, if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

*Illustration.*

A, by his will, bequeaths a fund to his wife for her life, and directs that, at her death, it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made an appointment. The fund shall be divided equally among the children.

### 80. Where a bequest is made to the "heirs" or "right heirs,"

Bequest to "heirs," &c., or "relations" or "nearest relations," or of particular person without "family," or "kindred," or "nearest of qualifying terms.

kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it leaving assets for the payment of his debts independently of such property.

#### *Illustrations.*

(a) A leaves his property "to his own nearest relation." The property goes to those who would be entitled to it if A had died intestate, leaving assets for the payment of his debts independently of such property.

(b.) A bequeaths 10,000 rupees "to B for his life, and after the death of B to his own right heirs." The legacy after B's death belongs to those who would be entitled to it if it had formed part of A's unbequeathed property.

(c.) A leaves his property to B; but, if B dies before him, to B's next of kin. B dies before A. The property devolves as if it had belonged to B, and he had died intestate, leaving assets for the payment of his debts, independently of such property.

(d.) A leaves 10,000 rupees "to B for his life, and, after his decease to the heirs of C." The legacy goes as if it had belonged to C, and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

### 81. Where a bequest is made to the "representatives," or

Bequest to "Representatives," &c., of particular person. "legal representatives," or "personal representatives," or "executors or administrators," of a particular person, and

the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

#### *Illustration.*

A bequest is made to the "legal representative" of A. A has died intestate and insolvent. B is his administrator. B is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A's debts as may remain unpaid: If there be any surplus, B shall pay it to those persons who, at A's death, would have been entitled to receive any property of A's which might remain after payment of his debts, or to the representatives of such persons.

**82.\*** Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein unless it appears from the will that only a restricted interest was intended for him.

**83.\*** Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons, if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he be alive at the time when it takes effect; but, if he be then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

*Illustrations.*

(a.) A bequest is made to A or to B. A survives the testator. B takes nothing.

(b.) A bequest is made to A or to B. A dies after the date of the will and before the testator. The legacy goes to B.

(c.) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(d.) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(e.) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(f.) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death, the bequest to the heirs of B takes effect.

(g.) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death, the bequest to the heirs of B takes effect.

**84.** Where property is bequeathed to a person, and words are added which describe a class of persons, a class added to bequest to but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein unless a contrary intention appears by the will.

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\* Ss. 82 and 83 apply to the wills of Hindus, &c., in Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustrations.*

(a.) A bequest is made—

to A and his children,  
to A and his children by his present wife,  
to A and his heirs,  
to A and the heirs of his body,  
to A and the heirs male of his body,  
to A and the heirs female of his body,  
to A and his issue,  
to A and his family,  
to A and his descendants,  
to A and his representatives,  
to A and his personal representatives,  
to A, his executors, and administrators :

In each of these cases, A takes the whole interest which the testator had in the property.

(b.) A bequest is made to A and his brothers. A and his brothers are jointly entitled to the legacy.

(c.) A bequest is made to A for life, and after his death to his issue. At the death of A the property belongs in equal shares to all persons who shall then answer the description of issue of A.

**85.\*** Where a bequest is made to a class of persons under a Bequest to class of persons under general description only. general description only, no one to whom the words of the description are not, in their ordinary sense, applicable shall take the legacy.

**86.** The word “children” in a will applies only to lineal descendants in the first degree, the word “grandchildren” applies only to lineal descendants in the second degree, of the person whose “children” or “grandchildren” are spoken of;

the words “nephews” and “nieces” apply only to children of brothers or sisters;

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\* S. 85 applies to the wills of Hindus, &c., in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

the words "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german" are spoken of;

the words "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;

the words "second cousins" apply only to grandchildren of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;

the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of.

Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

All words expressive of relationship apply to a child in the womb who is afterwards born alive.

87. In the absence of any intimation to the contrary in the will, the term "child," "son," or

Words expressing relationship denote only legitimate relatives, or, failing such, relatives reputed legitimate.

"daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative

a person who has acquired, at the date of the will, the reputation of being such relative.

#### *Illustrations.*

(a.) A, having three children, B, C, and D, of whom B and C are legitimate, and D is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B and C in equal shares to the exclusion of D.

(b.) A, having a niece of illegitimate birth, who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(c.) A, having in his will enumerated his children, and named as one of them B, who is illegitimate, leaves a legacy to "his said children." B will take a share in the legacy along with the legitimate children.

(d.) A leaves a legacy to the "children of B." B is dead, and has left none but illegitimate children. All those who had, at the date of the will, acquired the reputation of being the children of B are objects of the gift.

(e.) A bequeathed a legacy to "the children of B." B never had any legitimate child. C and D had, at the date of the will, acquired the reputation of being children of B. After the date of the will, and before the death of the testator, E and F were born, and acquired the reputation of being children of B. Only C and D are objects of the bequest.

(f.) A makes a bequest in favour of his child by a certain woman, not his wife. B had acquired, at the date of the will, the reputation of being the child of A by the woman designated. B takes the legacy.

(g.) A makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(h.) A makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

### 88.\* Where a will purports to make two bequests to the same

Rules of construction where person, and a question arises whether will purports to make two the testator intended to make the second bequests to same person. bequest instead of, or in addition to, the first, if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will:—

*First.*—If the same specific thing is bequeathed twice to the same legatee in the same will, or in the will, and again in a codicil, he is entitled to receive that specific thing only.

*Second.*—Where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only.

*Third.*—Where two legacies of unequal amount are given to the same person in the same will or in the same codicil, the legatee is entitled to both.

*Fourth.*—Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

*Explanation.*—In the four last rules, the word "will" does not include a codicil.

### *Illustrations.*

(a.) A, having ten shares, and no more, in the Bank of Bengal, made his will, which contains near its commencement the words, "I bequeath my

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\* This section and ss. 88-103 (both inclusive) apply to the wills of Hindus, &c., in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.



ten shares in the Bank of Bengal to B." After other bequests, the will concludes with the words, "and I bequeath my ten shares in the Bank of Bengal to B." B is entitled simply to receive A's ten shares in the Bank of Bengal.

(b.) A, having one diamond ring which was given him by B, bequeathed to C the diamond ring which was given him by B. A afterwards made a codicil to his will, and thereby, after giving other legacies, he bequeathed to C the diamond ring which was given him by B. C can claim nothing except the diamond ring which was given to A by B.

(c.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, in the same will, repeats the bequest in the same words. B is entitled to one legacy of 5,000 rupees only.

(d.) A, by his will, bequeaths to B the sum of 5,000 rupees, and afterwards, the same will, bequeaths to B the sum of 6,000 rupees. B is entitled to 11,000 rupees.

(e.) A, by his will, bequeaths to B 5,000 rupees, and by a codicil to the will he bequeaths to him 5,000 rupees. B is entitled to receive 10,000 rupees.

(f.) A, by one codicil to his will, bequeaths to B 5,000 rupees, and by another codicil bequeaths to him 6,000 rupees. B is entitled to receive 11,000 rupees.

(g.) A, by his will, bequeaths "500 rupees to B, because she was his nurse," and in another part of the will bequeaths 500 rupees to B, "because she went to England with his children. B is entitled to receive 1,000 rupees.

(h.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also, in another part of the will, an annuity of 400 rupees. B is entitled to both legacies,

(i.) A, by his will, bequeaths to B the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

**89.** A residuary legatee may be constituted by any words

Constitution of residuary that show an intention on the part of the legatee. testator that the person designated shall take the surplus or residue of his property.

### *Illustrations.*

A makes her will, consisting of several testamentary papers, in one of which are contained the following words "I think there will be something left, after all funeral expenses, &c., to give to B, now at school, towards equipping him to any profession he may hereafter be appointed to." B is constituted residuary legatee

(b.) A makes his will with the following passage at the end of it: "I believe there will be found sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B to do, and keep the residue for her own use and pleasure." B is constituted the residuary legatee.

(c.) A bequeaths all his property to B, except certain stocks and funds which he bequeaths to C. B is the residuary legatee.

90. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death of which he has not made any other testamentary disposition which is capable of taking effect.

#### *Illustration.*

A, by his will, bequeaths certain legacies, one of which is void under section 105, and another lapses by the death of the legatee. A bequeaths the residue of his property to B. After the date of his will, A purchases a zemindari, which belongs to him at the time of his death. B is entitled to the two legacies and the zemindari as part of the residue.

91. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

92. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

In what case legacy lapses.

In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

#### *Illustrations.*

(a.) The testator bequeaths to B "500 rupees which B owes him." B dies before the testator. The legacy lapses.

(b.) A bequest is made to A and his children.\* A dies before the testator, or happens to be dead when the will is made. The legacy to A and his children lapses.

(c.) A legacy is given to A, and, in case of his dying before the testator to B. A dies before the testator. The legacy goes to B.

(d.) A sum of money is bequeathed to A for life, and after his death to B. A dies in the lifetime of the testator; B survives the testator. The bequest to B takes effect.

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\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

(e.) A sum of money is bequeathed to A on his completing his eighteenth year, and in case he should die before he completes his eighteenth year, to B. A completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A lapses, and the bequest to B does not take effect.

(f) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

Legacy does not lapse if one of two joint legatees die before testator.

93. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

*Illustration.*

The legacy is simply to A and B. A dies before the testator, B takes the legacy.

94. But, where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then, if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

*Illustration.*

A sum of money is bequeathed to A, B, and C, to be equally divided among them. A dies before the testator. B and C shall only take so much as they would have had if A had survived the testator.

95. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.

*Illustration.*

The testator bequeaths the residue of his estate to A, B, and C. to be equally divided between them. A dies before the testator. His one-third of the residue goes as undisposed of.

96. Where a bequest shall have been made to any child\* or other lineal descendant of the testator, and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the be-

\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

quest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator unless a contrary intention shall appear by the will.

*Illustration.*

A makes his will, by which he bequeaths a sum of money to his son\* B for his own absolute use and benefit. B dies before A, leaving a son C who survives A, and having made his will, whereby he bequeaths all his property to his widow D. The money goes to D.

**97.** Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

Bequest to A for benefit of B does not lapse by A's death,

**98.** Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Survivorship in case of bequest to described class.

*Exception.*—If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

*Illustrations.*

(a.) A bequeaths 1,000 rupees to "the children" \* of B without saying when it is to be distributed among them. B had died previous to the date of the will leaving three children, C, D, and E. E died after the date of the will, but before the death of A. C and D survive A. The legacy shall belong to C and D to the exclusion of the representatives of E.

(b.) A bequeaths a legacy to the children\* of B. At the time of the testator's death, B has no children. The bequest is void.

(c.) A lease for years of a house was bequeathed to A for his life, and after his decease to the children\* of B. At the death of the testator, B had two children living, C and D; and he never had any other child. Afterwards during the lifetime of A, C died leaving E his executor. D has survived A. D and E are jointly entitled to so much of the leasehold term as remains unexpired.

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\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

(d.) A sum of money was bequeathed to A for her life, and after her decease to the children\* of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one of D, one to the administrator of E, and one to F.

(e.) A bequeaths one-third of his lands, to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B; D and E have survived B. One-third of A's lands belongs to D, E, and the representatives of C in equal shares.

(f.) A bequeaths 1,000 rupees to B for life, and after his death equally among the children\* of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(g.) A bequeaths 1,000 rupees to "all the children,\* born or to be born," of B, to be divided among them at the death of C. At the death of the testator, B has two children living, D and E. After the death of the testator, but in the lifetime of C, two other children, F and G, are born to B. After the death of C, another child is born to B. The legacy belongs to D, E, F, and G, to the exclusion of the after-born child of B.

(h.) A bequeaths a fund to the children\* of B, to be divided among them when the elder shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children, named D and E. E died, but C and D were living when C attained majority. The fund belongs to C, D, and the representatives of E to the exclusion of any child who may be born to B after C's attaining majority.

## PART XII.†

### OF VOID BEQUESTS.

Bequest to person by particular description who is not in existence at testator's death.

**99.** Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

*Exception.*—If property is bequeathed to a person described as standing in a particular degree of kindred to a specified indi-

\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

† Of Part XII., ss. 99 to 103 (both inclusive) apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), ss. 2 and 6, as amended by the Probate and Administration Act (V. of 1881), s. 154.

dual, but his possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

### *Illustrations.*

(a.) A bequeaths 1,000 rupees to the eldest son\* of B. At the death of the testator, B has no son. The bequest is void.

(b.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son\* of C. At the death of the testator, C had no son. Afterwards, during the life of B, a son is born to C. Upon B's death, the legacy goes to C's son.

(c.) A bequeaths 1,000 rupees to B for life, and after his death to the eldest son\* of C. At the death of the testator, C had no son; afterwards, during the life of B, a son named D is born to C. D dies; then B dies. The legacy goes to the representative of D.

(d.) A bequeaths his estate of Green Acre to B for life, and at his decease to the eldest son\* of C. Up to the death of B, C has had no son. The bequest to C's eldest son is void.

(e.) A bequeaths 1,000 rupees to the eldest son\* of C, to be paid to him after the death of B. At the death of the testator, C has no son, but a son is afterwards born to him during the life of B, and is alive at B's death. C's son is entitled to the 1,000 rupees.

## 100. Where a bequest is made to a person not in existence at

the time of the testator's death, subject to a prior bequest contained in the will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

### *Illustrations.*

(a.) Property is bequeathed to A for his life, and after his death to his eldest son\* for life, and after the death of the latter, to his eldest son. At the time of the testator's death, A has no son. Here the bequest to A's eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A's eldest son for his life is void.

(b.) A fund is bequeathed to A for his life, and after his death to his daughters. A survives the testator. A has daughters, some of whom were

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\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

not in existence at the testator's death. The bequest to A's daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A's daughters is valid.

(c) A fund is bequeathed to A for his life, and after his death to his daughters, with a direction that, if any of them marries under the age of eighteen, her portion shall be settled, so that it may belong to herself for life, and may be divisible among her children\* after her death. A has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect, in the case of each daughter who marries under eighteen, of substituting, for the absolute bequest to her, a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(d.) A bequeaths a sum of money to B for life, and directs that, upon the death of B, the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children\* after her death. B has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life-interest in the fund, that is to say, of something which is less than the whole interest that remains in the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B is void.

**101.** No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong,

### *Illustrations.*

(a.) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of the sons\* of B as shall first attain the age of 25. A and B survive the testator. The son of B, who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B; and the vesting of the fund may thus be delayed beyond the lifetime of A and B and the minority of the sons of B. The bequest after B's death is void.

(b.) A fund is bequeathed to A for his life; and after his death to B for his life; and after B's death to such of B's sons\* as shall first attain the age of 25. B dies in the lifetime of the testator, leaving one or more sons.

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\* See the Hindoo Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

In this case the sons of B are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(c.) A fund is bequeathed to A for his life, and after his death to B for his life, with a direction that, after B's death, it shall be divided amongst such of B's children\* as shall attain the age of 18: but that, if no child of B shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B, a person living at the testator's decease. All the bequests are valid.

(d.) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that, if any of them marry under age, her share of the fund shall be settled, so as to devolve after her death upon such of her children\* as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

## 102. If a bequest is made to a class of persons, with regard to

Request to a class, some of whom may come under rules in sections 100 and 101.

some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.†

### *Illustrations.*

(a) A fund is bequeathed to A for life, and after his death to all his children\* who shall attain the age of 25. A survives the testator, and has some children living at the testator's death. Each child of A's living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A's children, therefore, is inoperative as to any child born after the testator's death; and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(b.) A fund is bequeathed to A for his life, and after his death to B, C, D, and all other the children\* of A who shall attain the age of 25. B, C, D, are children of A living at the testator's decease. In all other respects the case is the same as that supposed in illustration (a). The mention of B, C, and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

† 8 B. L. R. 400.



### 103. Where a bequest is void by reason of any of the rules

contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

#### *Illustrations.*

(a.) A fund is bequeathed to A for his life and after his death to such of his sons\* as shall first attain the age of 25, for his life, and after the decease of such son, to B. A and B survive the testator. The bequest to B is intended to take effect after the bequest to such of the sons of A as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

(b.) A fund is bequeathed to A for his life, and after his death to such of his sons\* as shall first attain the age of 25, and, if no son of A shall attain that age, to B. A and B survive the testator. The bequest to B is intended to take effect upon failure of the bequest to such of A's sons\* as shall first attain the age of 25, which bequest is void under section 101. The bequest to B is void.

### 104. A direction to accumulate the income arising from any

property shall be void; and the property shall be disposed of as if no accumulation had been directed.

*Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death;

and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

#### *Illustrations.*

(a.) The will directs that the sum of 10,000 rupees shall be invested in Government securities, and the income accumulated for 20 years, and that the principal, together with the accumulations, shall then be divided between A, B, and C. A, B, and C are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(b.) The will directs that 10,000 rupees shall be invested, and the income accumulated until A shall marry, and shall then be paid to him. A is entitled to receive 10,000 rupees at the end of a year from the testator's death.

\* See the Hindu Wills Act (XXI. of 1870), s. 6 (which is reproduced as foot-note at p. 23, *supra*).

(c.) The will directs that the rents of the farm of Sultanpur shall be accumulated for ten years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator, A has an eldest son living, named B. B shall receive, at the end of one year from the testator's death, the rents which have accrued during the year, together with any interest which may have been made by investing them.

(d.) The will directs that the rents of the farm of Sultanpore shall be accumulated for ten years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator, A has no son. The bequest is void.

(e.) A bequeaths a sum of money to B, to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A's death, the legacy becomes vested in B; and so much of the interest as is not required for his maintenance and education is accumulated not by reason of the direction contained in the will, but in consequence of B's minority.

**105.** No man having a nephew or niece or any nearer relative Bequest to religious or shall have power to bequeath any property charitable uses. to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

*Illustration.*

A, having a nephew, makes a bequest by a will not executed nor deposited as required—

- for the relief of poor people ;
- for the maintenance of sick soldiers ;
- for the erection or support of a hospital ;
- for the education and preferment of orphans ;
- for the support of scholars ;
- for the erection or support of a school ;
- for the building and repairs of a bridge ;
- for the making of roads ;
- for the erection or support of a church ;
- for the repairs of a church ;
- for the benefit of ministers of religion ;
- for the formation or support of a public garden .

All these bequests are void.

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(h.) An estate is bequeathed to A if he shall pay 500 rupees to B. A's interest in the bequest is contingent until he has paid 500 rupees to B.

(i.) A leaves his farm of Sultanpur Khurd to B if B shall convey his own farm of Sultanpur Buzurg to C. B's interest in the bequest is contingent until he has conveyed the latter farm to C.

(j.) A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the condition shall be fulfilled by the expiration of the five years without B's having married C, or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(k.) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.

(l.) A bequeaths to B 500 rupees a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof, shall be applied for his benefit until he reaches that age. The legacy is vested.

(m.) A bequeaths to B 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

**103.** Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Vesting of interest in bequest to such members of a class as shall have attained particular age.

#### *Illustration.*

A fund is bequeathed to such of the children of A as shall attain the age of 18, with a direction that, while any child of A shall be under the age of 18, the income of the share to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A, who is under the age of 18, has a vested interest in the bequest.

## **PART XIV.\***

### **OF ONEROUS BEQUESTS.**

**109.** Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Onerous bequest.

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\* Part XIV. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustration.*

A, having shares in (X), a prosperous joint-stock company, and also shares in (Y), a joint-stock company in difficulties, in respect of which shares heavy calls are expected to be made, bequeaths to B all his shares in joint-stock companies. B refuses to accept the shares in (Y). He forfeits the shares in (X).

- 110.** Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them, and refuse the other, although the former may be beneficial and the latter onerous.

One of two separate and independent bequests to same person may be accepted, and the other refused.

*Illustration.*

A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B the lease and a sum of money. B refuses to accept the lease. He shall not, by his refusal, forfeit the money.

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## PART XV.\*

### OF CONTINGENT BEQUESTS.

- 111.** Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

*Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence.*

*Illustrations.*

(a.) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect.

(b.) A legacy is bequeathed to A, and, in case of his death without children, to B. If A survives the testator, or dies in his lifetime leaving a child, the legacy to B does not take effect.

(c.) A legacy is bequeathed to A when and if he attains the age of 18, and, in case of his death, to B. A attains the age of 18. The legacy to B does not take effect.

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\* Part XV. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

(d.) A legacy is bequeathed to A for life, and after his death to B, and, "in case of B's death without children," to C. The words "in case of B's death without children" are to be understood as meaning "in case B shall die without children during the lifetime of A."

(e.) A legacy is bequeathed to A for life, and after his death to B and, "in case of B's death," to C. The words "in case of B's death" are to be considered as meaning "in case B shall die in the lifetime of A."

## 112. Where a bequest is made to such of certain persons as

Bequest to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution unless a contrary intention appear by the will.

### *Illustrations.*

(a.) Property is bequeathed to A and B, to be equally divided between them, or to the survivor of them. If both A and B survive the testator, the legacy is equally divided between them. If A dies before the testator, and B survives the testator, it goes to B.

(b) Property is bequeathed to A for life, and after his death to B and C, to be equally divided between them, or to the survivor of them. B dies during the life of A, C survives A. At A's death the legacy goes to C.

(c.) Property is bequeathed to A for life, and after his death to B and C, or the survivor, with a direction that, if B should not survive the testator, his children are to stand in his place. C dies during the life of the testator. B survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(d.) Property is bequeathed to A for life, and after his death to B and C, with a direction that, in case either of them dies in the lifetime of A, the whole shall go to the survivor. B dies in the lifetime of A. Afterwards C dies in the lifetime of A. The legacy goes to the representative of C.

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## PART XVI.\*

### OF CONDITIONAL BEQUESTS.

Bequest upon impossible condition.

113. A bequest upon an impossible condition is void.

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\* Part XVI. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustrations.*

(a.) An estate is bequeathed to A on condition that he shall walk one hundred miles in an hour. The bequest is void.

(b.) A bequeaths 500 rupees to B on condition that he shall marry A's daughter. A's daughter was dead at the date of the will. The bequest is void.

**114.** A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.  
Bequest upon illegal or immoral condition.

*Illustrations.*

(a.) A bequeaths 500 rupees to B on condition that he shall murder C. The bequest is void.

(b.) A bequeaths 5,000 rupees to his niece if she will desert her husband. The bequest is void.

**115.** Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.  
Fulfilment of condition precedent to vesting of legacy.

*Illustrations.*

(a.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, D, and E. A marries with the written consent of B, C is present at the marriage. D sends a present to A previous to the marriage. E has been personally informed by A of his intentions, and has made no objection. A has fulfilled the condition.

(b.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. D dies. A marries with the consent of B and C. A has fulfilled the condition.

(c.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries in the lifetime of B, C, and D, with the consent of B, and C only. A has not fulfilled the condition.

(d.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A obtains the unconditional assent of B, C, and D, to his marriage with E. Afterwards B, C, and D capriciously retract their consent. A marries E. A has fulfilled the condition.

(e.) A legacy is bequeathed to A on condition that he shall marry with the consent of B, C, and D. A marries without the consent of B, C, and D, but obtains their consent after the marriage. A has not fulfilled the condition.

(f.) A makes his will, whereby he bequeaths a sum of money to B: if B shall marry with the consent of A's executors. B marries during the lifetime of A, and A afterwards expresses his approbation of the marriage. A dies. The bequest to B takes effect.

(g.) A legacy is bequeathed to A if he executes a certain document within a time specified in the will. The document is executed by A within a reasonable time, but not within the time specified in the will. A has not performed the condition, and is not entitled to receive the legacy.

**116.** Where there is a bequest to one person, and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest although the failure may not have occurred in the manner contemplated by the testator.

#### *Illustrations.*

(a.) A bequeaths a sum of money to his own children surviving him and, if they all die under 18, to B. A dies without having ever had a child. The bequest to B takes effect.

(b.) A bequeaths a sum of money to B on condition that he shall execute a certain document within three months after A's death, and, if he should neglect to do so, to C. B dies in the testator's lifetime. The bequest to C takes effect.

**117.** Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

#### *Illustration.*

A makes a bequest to his wife, but, in case she should die in his lifetime, bequeaths to B that which he had bequeathed to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The bequest to B does not take effect.

**118.** A bequest may be made to any person with the condition superadded that, in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that, in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person.

In each case the ulterior bequest is subject to the rules contained in sections 107, 108, 109, 110, 111, 112, 113, 114, 116, and 117.

*Illustrations.*

(a.) A sum of money is bequeathed to A, to be paid to him at the age of 18, and, if he shall die before he attains that age, to B. A takes a vested interest in the legacy, subject to be divested and to go to B in case A shall die under 18.

(b.) An estate is bequeathed to A, with a proviso that, if A shall dispute the competency of the testator to make a will, the estate shall go to B. A disputes the competency of the testator to make a will. The estate goes to B.

(c.) A sum of money is bequeathed to A for life, and after his death to B, but, if B shall then be dead, leaving a son, such son is to stand in the place of B. B takes a vested interest in the legacy, subject to be divested if he dies leaving a son in A's lifetime.

(d.) A sum of money is bequeathed to A and B, and if either should die during the life of C, then to the survivor living at the death of C. A and B die before C. The gift over cannot take effect, but the representative of A takes one-half of the money, and the representative of B takes the other half.

(e.) A bequeaths to B the interest of a fund for life, and directs the fund to be divided at her death equally among her three children, or such of them as shall be living at her death. All the children of B die in B's lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

**119.** An ulterior bequest of the kind contemplated by the Condition must be strictly last preceding section cannot take effect unless the condition is strictly fulfilled.

*Illustrations.*

(a.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, C. and D. the legacy shall go to E. D dies. Even if A marries without the consent of B and C, the gift to E does not take effect.

(b.) A legacy is bequeathed to A with a proviso that, if he marries without the consent of B, the legacy shall go to C. A marries with the consent of B. He afterwards becomes a widower, and marries again without the consent of B. The bequest to C does not take effect.

(c.) A legacy is bequeathed to A, to be paid at 18 or marriage, with a proviso that, if A dies under 18 or marries without the consent of B, the legacy shall go to C. A marries under 18 without the consent of B. The bequest to C takes effect.

Original bequest not affected by invalidity of second.

**120.** If the ulterior bequest be not valid, the original bequest is not affected by it.



*Illustrations.*

(a.) An estate is bequeathed to A for his life, with a condition superadded that, if he shall not, on a given day, walk 100 miles in an hour, the estate shall go to B. The condition being void, A retains his estate as if no condition had been inserted in the will.

(b.) An estate is bequeathed to A for her life, and, if she do not desert her husband, to B. A is entitled to the estate during her life as if no condition had been inserted in the will.

(c) An estate is bequeathed to A for life, and, if he marries, to the eldest son of B for life. B, at the date of the testator's death, had not had a son. The bequest over is void under section 92, and A is entitled to the estate during his life.

Bequest conditioned that it shall cease to have effect in case specified uncertain event shall happen or not happen.

**121.** A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

*Illustrations.*

(a.) An estate is bequeathed to A for his life, with a proviso that, in case he shall cut down a certain wood, the bequest shall cease to have any effect. A cuts down the wood; he loses his life-interest in the estate.

(b.) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him.

(c.) An estate is bequeathed to A provided that, if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A does not go to England within the time prescribed. His interest in the estate ceases.

(d.) An estate is bequeathed to A, with a proviso that, if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun. She loses her interest under the will.

(e) A fund is bequeathed to A for life, and after his death to B, if B shall be then living, with a proviso that, if B shall become a nun, the bequest to her shall cease to have any effect. B becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

**122.** In order that a condition that a bequest shall cease to

Such condition must not have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by the 107th section.

**123.** Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject-matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act, if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

*Illustrations.*

(a.) A bequest is made to A with a proviso that, unless he enters the army, the legacy shall go over to B. A takes holy orders, and thereby renders it impossible that he should fulfil the condition. B is entitled to receive the legacy.

(b.) A bequest is made to A, with a proviso that it shall cease to have any effect if he does not marry B's daughter. A marries a stranger, and thereby indefinitely postpones the fulfilment of the condition. The bequest ceases to have effect.

**124.** Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

Further time in case of

Performance of condition, precedent or subsequent, within specified time.

## PART XVII.\*

## OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

**125.** Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

*Illustration.*

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

**126.** Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

*Illustrations.*

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

**127.** Where a testator does not absolutely bequeath a fund so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the Bequest of fund for certain purposes, some of which cannot be fulfilled.

\* Part XVII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

*Illustrations.*

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children: the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that, at their decease, the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

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PART XVIII.\*

OF BEQUESTS TO AN EXECUTOR.

**128.** If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an interest to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

*Illustration.*

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will: A has manifested an intention to act as executor.

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## PART XVII.\*

## OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT.

**125.** Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

*Illustration.*

A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

**126.** Where a testator absolutely bequeaths a fund, so as to

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

*Illustrations.*

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

**127.** Where a testator does not absolutely bequeath a fund

Bequest of fund for certain purposes, some of which cannot be fulfilled.

so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the

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Direction that funds be employed in particular manner following absolute bequest of same to or for benefit of any person.

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A sum of money is bequeathed towards purchasing a country residence for A, or to purchase an annuity for A, or to purchase a commission in the army for A, or to place A in any business. A chooses to receive the legacy in money. He is entitled to do so.

- 126.** Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee, if that benefit cannot be obtained for the legatee, the fund belongs to him as if the will had contained no such direction.

Direction that mode of enjoyment of absolute bequest is to be restricted, to secure specified benefit for legatee.

*Illustrations.*

(a.) A bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(b.) A directs his trustees to raise a sum of money for his daughter and he then directs that they shall invest the fund, and pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

- 127.** Where a testator does not absolutely bequeath a fund so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the

Bequest of fund for certain purposes, some of which cannot be fulfilled.

\* Part XVII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

fund, or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.

### *Illustrations.*

(a.) A directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and, at his death, shall divide the principal among his children: the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(b.) A bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that, at their decease, the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

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## PART XVIII.\*

### OF BEQUESTS TO AN EXECUTOR.

**128.** If a legacy is bequeathed to a person who is named an

<p>Legatee named as executor cannot take unless he shows intention to act as executor.</p>	<p>executor of the will, he shall not take the legacy unless he proves the will, or otherwise manifests an interest to act as executor.</p>
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### *Illustration.*

A legacy is given to A, who is named an executor. A orders the funeral according to the directions contained in the will, and dies a few days after the testator, without having proved the will: A has manifested an intention to act as executor.

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\* Part XVIII. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

## PART XIX.\*

## OF SPECIFIC LEGACIES.

**129.** Where a testator bequeaths to any person a specified part of his property which is distinguished from all other parts of his property, the legacy is said to be specific.

*Illustrations.*

- (a.) A bequeaths to B—
- "the diamond-ring presented to him by C ;"
  - "his gold chain ;"
  - "a certain bale of wool ;"
  - "a certain piece of cloth ;"
  - "all his household-goods, which shall be in or about his dwelling-house in M Street in Calcutta at the time of his death ;"
  - "the sum of 1,000 rupees in a certain chest ;"
  - "the debt which B owes him ;"
  - "all his bills, bonds, and securities belonging to him lying in his lodgings in Calcutta ;"
  - "all his furniture in his house in Calcutta. ;"
  - "all his goods on board a certain ship then lying in the river Hugli ;"
  - "2,000 rupees which he has in the hands of C ;"
  - "the money due to him on the bond of D ;"
  - "his mortgage on the Rampur factory ;"
  - "one-half of the money owing to him on his mortgage of Rampur factory ;"
  - "1,000 rupees being part of a debt due to him from C ;"
  - "his capital stock of 1,000*l.* in East India Stock ;"
  - "his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan ;"
  - "all such sums of money as his executors may, after his death, receive in respect of the debt due to him from the insolvent firm of D and Company ;"
  - "all the wine which he may have in his cellar at the time of his death ;"
  - "such of his horses as B may select ;"
  - "all his shares in the Bank of Bengal ;"
  - "all the shares in the Bank of Bengal which he may possess at the time of his death ;"
  - "all the money which he has in the 5½ per cent. loan of the Government of India ;"
  - "all the Government securities he shall be entitled to at the time of the decease ;"

\* Part XIX. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.



Each of these legacies is specific.

(b.) A, having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory notes for 10,000 rupees in trust to sell" for the benefit of B :

The legacy is specific.

(c.) A, having property at Benares, and also in other places, bequeaths to B all his property at Benares :

The legacy is specific.

(d.) A bequeaths to B—

- his house in Calcutta ;
- his zemindari of Rampur ;
- his taluq of Ramnagar ;
- his lease of the indigo factory of Salkya ;
- an annuity of 500 rupees out of the rents of his zemindari of W ;

A directs his zemindari of X. to be sold, and the proceeds to be invested for the benefit of B :

Each of these bequests is specific.

(e.) A, by his will, charges his zemindari of Y with an annuity of 1,000 rupees to C during his life, and subject to this charge he bequeaths the zemindari to D :

Each of these bequests is specific.

(f.) A bequeaths a sum of money—

- to buy a house in Calcutta for B ;
- to buy an estate in zillah Faridpur for B ;
- to buy a diamond ring for B ;
- to buy a horse for B ;
- to be invested in shares in the Bank of Bengal for B ;
- to be invested in Government securities for B :

A bequeaths to B—

- "a diamond ring ;"
- "a horse ;"
- "10,000 rupees worth of Government securities ;"
- "an annuity of 500 rupees ;"
- "2,000 rupees to be paid in cash ;"
- "so much money as will produce 5,000 rupees four per cent. Government securities."

These bequests are not specific.

(g.) A, having property in England and property in India, bequeaths a legacy to B, and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C, and directs that it shall be paid out of the property which he may leave in England :

No one of these legacies is specific.

130. Where a sum certain is bequeathed, the legacy is not

specific merely because the stocks, funds, or securities in which it is invested are described in the will.

Request of sum certain where stocks, &c., in which invested are described.

*Illustration.*

A bequeaths to B—

"10,000 rupees of his funded property;"

"10,000 rupees of his property now invested in shares of the East Indian Railway Company;"

"10,000 rupees, at present secured by mortgage of Rampur factory;"

No one of these legacies is specific.

**131.** Where a bequest is made, in general terms, of a certain amount of any kind of stock, the legacy Bequest of stock where testator had, at date of will equal or greater amount of stock of same kind. is not specific merely because the testator was, at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

*Illustration.*

A bequeaths to B 5,000 rupees five per cent. Government securities. A had, at the date of the will, five per cent. Government securities for 5,000 rupees:

The legacy is not specific.

**132.** A money-legacy is not specified merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place. Bequest of money where not payable until part of testator's property disposed of in certain way.

*Illustration.*

A bequeaths to B 10,000 rupees, and directs that this legacy shall be paid as soon A's property in India shall be realized in England:

The legacy is not specific.

**133.** Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed. When enumerated articles not deemed specifically bequeathed.

**134.** Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing. Retention, in form of persons in succession.

*Illustrations.*

(a.) A, having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B for his life, and, after B's death, to C. B is to enjoy the property as A left it, although, if B lives for 15 years, C can take nothing under the bequest.

(b.) A, having an annuity during the life of B, bequeaths it to C for his life, and, after C's death, to D. C is to enjoy the annuity as A left it, although, if B dies before D, D can take nothing under the bequest.

**135.** Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

*Illustration.*

A, having a lease for a term of years, bequeaths "all his property" to B for life, and after B's death to C. The lease must be sold, and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B for life. At B's death the capital of the fund is to be paid to C.

Where deficiency of assets to pay legacies, specific legacy not to abate with general legacies.

**136.** If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

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PART XX.\*

OF DEMONSTRATIVE LEGACIES.

**137.** Where a testator bequeaths a certain sum of money or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

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\* Part XX. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

**Explanation.**—The distinction between a specific legacy and a demonstrative legacy consists in this that,

where specified property is given to the legatee, the legacy is specific:

where the legacy is directed to be paid out of a specified property, it is demonstrative.

### *Illustrations.*

(a.) A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The legacy to B is specific; the legacy to C is demonstrative.

(b.) A bequeaths to B—

“ten bushels of the corn which shall grow in his field of Greenacre;”

“80 chests of the indigo which shall be made at his factory of Rampur;”

“10,000 rupees out of his five per cent. promissory notes of the Government of India;”

an annuity of 500 rupees “from his funded property;”

“1,000 rupees out of the sum of 2,000 rupees due to him by C:”

A bequeaths to B an annuity, and directs it to be paid out of the rents arising from his taluq of Ramnagar:

A bequeaths to B—

“10,000 rupees out of his estate at Ramnagar,” or charges it on his estate at Ramnagar;”

“10,000 rupees, being his share of the capital embarked in a certain business”;

Each of these bequests is demonstrative.

### **138.** Where a portion of a fund is specifically bequeathed,

and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

### *Illustration.*

A bequeaths to B 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. The debt due to A from W is only 1,500 rupees; of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C. C is also to receive 500 rupees out of the general assets of the testator.

## PART XXI.\*

## OF ADEMPMENT OF LEGACIES.

**139.** If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the will.

*Adeemption explained.*

*Illustrations.*

(a.) A bequeaths to B—

“the diamond-ring presented to him by C;”

“his gold-chain;”

“a certain bale of wool;”

“a certain piece of cloth;”

“all his household-goods which shall be in or about his dwelling house in M Street in Calcutta at the time of his death:”

A, in his lifetime,—

sells or gives away the ring;

converts the chain into a cup;

converts the wool into cloth;

makes the cloth into a garment;

takes another house into which he removes all his goods:

Each of these legacies is adeemed.

(b.) A bequeaths to B—

“the sum of 1,000 rupees in a certain chest.”

“all the horses in his stable:”

At the death of A, no money is found in the chest, and no horses in the stable. The legacies are adeemed.

(c.) A bequeaths to B certain bales of goods. A takes the goods with him on a voyage. The ship and goods are lost at sea, and A is drowned. The legacy is adeemed.

**140.** A demonstrative legacy is not adeemed by reason that

Non-ademption of demonstrative legacy. the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind: but it shall, in such case, be paid out of the general assets of the testator.

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\* Part XXI. applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

**141.** Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Ademption of specific bequest of right to receive something from third party.

*Illustrations.*

(a.) A bequeaths to B—

- "the debt which C owes him ;"
- "2,000 rupees which he has in the hands of D ;"
- "the money due to him on the bond of E ;"
- "his mortgage on the Rampur factory ;"

All these debts are extinguished in A's lifetime, some with and some without his consent. All the legacies are adeemed.

(b.) A bequeaths to B "his interest in certain policies of life assurance." A in his lifetime receives the amount of the policies. The legacy is adeemed.

Ademption *pro tanto* by testator's receipt of part of entire thing specifically bequeathed.

**142.** The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

*Illustration.*

A bequeaths to B "the debt due to him by C." The debt amounts to 10,000 rupees. C pays to A 5,000 rupees, the one-half of the debt. The legacy is revoked by ademption so far as regards the 5,000 rupees received by A.

**143.** If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received ; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Ademption *pro tanto* by testator's receipt of portion of entire fund of which portion has been specifically bequeathed.

*Illustration.*

A bequeaths to B one half of the sum of 10,000 rupees due to him from W. A, in his lifetime, receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W to A at the time of his death belong to B under the specific bequest.

**144.** Where a portion of a fund is specifically bequeathed to

Order of payment where portion of fund specifically bequeathed to one legatee, and legacy charged on same fund to another, and testator having received portion of that fund, remainder insufficient to pay both legacies.

one legatee, and a legacy charged on the same fund is bequeathed to another legatee, if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be

applied, so far as it will extend, in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

*Illustration.*

A bequeaths to B 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C 1,000 rupees to be paid out of the debt due to him from W. A afterwards receives 500 rupees part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees, 1,000 rupees belong to B, and 500 rupees are to be paid to C, C is also to receive 500 rupees out of the general assets of the testator.

Ademption where stock specifically bequeathed does not exist at testator's death.

**145.** Where stock, which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

*Illustration.*

A bequeaths to B—

"his capital stock of 1,000*l.* in East India Stock ;"

"his promissory notes of the Government of India for 10,000 rupees in their four per cent. loan ;"

A sells the stock and the notes. The legacies are adeemed.

**146.** Where stock, which has been specifically bequeathed,

Ademption *pro tanto* where stock, specifically bequeathed, exists in part only at testator's death.

does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

*Illustration.*

A bequeaths to B "his 10,000 rupees in the 5½ per cent. loan of the Government of India." A sells one-half of his 10,000 rupees in the loan in question. One-half of the legacy is adeemed,

**147.** A specific bequest of goods under a description connecting them with a certain place is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

*Illustrations.*

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A dies before they are brought back :

A bequeaths to B "all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death." During A's absence upon a journey, the whole of the goods are removed from the house. A dies without having sanctioned their removal :

Neither of these legacies is adeemed.

**148.** The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption where the place is only referred to in order to complete the description of what the testator meant to bequeath.

*Illustrations.*

A bequeaths to B all the bills, bonds, and other securities for money belonging to him, then lying in his lodgings in Calcutta. At the time of his death, these effects had been removed from his lodgings in Calcutta :

A bequeaths to B all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah :

A bequeaths to B all his goods on board a certain ship then lying in the river Hugli. The goods are removed by A's directions to a warehouse, in which they remain at the time of A's death :

No one of these legacies is revoked by ademption.

**149.** Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator

When thing bequeathed is a valuable to be received by testator from third person, and testator himself or his representative receives it.

shall not constitute an ademption ;



of 1865.]

but, if he mixes it up with the general mass of his property, the legacy is adeemed.

*Illustration.*

A bequeaths to B whatever sum may be received from his claim on C. A receives the whole of his claim on C, and sets it apart from the general mass of his property. The legacy is not adeemed.

### 150 Where a thing specifically bequeathed undergoes a

Change by operation of law of subject of specific bequest between date of will and testator's death.

change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not adeemed by reason of such change.

*Illustrations.*

A bequeaths to B "all the money which he has in the 5½ per cent. loan of the Government of India." The securities for the 5½ per cent. loan are converted during A's lifetime into five per cent. stock :

A bequeaths to B the sum of 2,000*l.* invested in consols in the names of trustees for A. The sum of 2,000*l.* is transferred by the trustees into A's own name :

A bequeaths to B the sum of 10,000 rupees in promissory notes of the Government of India, which he has power, under his marriage settlement, to dispose of by will. Afterwards, in A's lifetime, the fund is converted into consols by virtue of an authority contained in the settlement :

No one of these legacies has been adeemed.

### 151. Where a thing specifically bequeathed undergoes a

Change of subject without testator's knowledge.

change between the date of the will and the testator's death, and the change takes

place without the knowledge or sanction of the testator, the legacy is not adeemed.

*Illustration.*

A bequeaths to B "all his three per cent. consols." The consols are, without A's knowledge, sold by his agent, and the proceeds converted into East India Stock. This legacy is not adeemed.

Stock specifically bequeathed, lent to third party on condition that it be replaced.

152. Where stock, which has been specifically bequeathed, is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

133. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased, and belongs to the testator at his death, the legacy is not adeemed.

## PART XXII.\*

### THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST.

134. Where property specifically bequeathed is subject, at the death of the testator, to any pledge, lien, or incumbrance created by the testator himself, or by any person under whom he claims, unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such incumbrance, and shall (as between himself and the testator) be liable to make good the amount of such pledge or

incumbrance, unless a contrary intention shall not be inferred from the will or any direction may contain for the payment of the debts

cal payment in  
is not such an

*Illustrations.*

(a.) A, having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B, and dies before he has paid the purchase money. The purchase-money must be made good out of A's assets.

(b.) A, having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B, and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A's assets.

**156.** Where there is a bequest of any interest in immoveable

Exoneration of legatee's immoveable property for which land-revenue or rent payable periodically. property, in respect of which payment in the nature of land-revenue or in the nature of rent, has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

*Illustration.*

A bequeaths to B a house, in respect of which 365 rupees are payable annually by way of rent. A pays his rent at the usual time, and dies 25 days after. A's estate shall make good 25 rupees in respect of the rent.

**157.** In the absence of any direction in the will where there

Exoneration of specific legatee's stock in joint-stock company. is a specific bequest of stock in a joint-stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate; but, if any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee if he accept the bequest.

*Illustrations.*

(a.) A bequeathed to B his shares in a certain railway. At A's death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A's estate.

(b.) A has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A bequeaths these shares to B. The estate of A must make good the payments which were necessary to complete A's title.

(c.) A bequeath to B his shares in a certain railway. B accepts the legacy. After A's death, a call is made in respect of the shares. B must pay the call.

(d.) A bequeaths to B his shares in a joint-stock company. B accepts the bequest. Afterwards the affairs of the company are wound up, and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(e.) A is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share payable by three instalments. A bequeaths his shares to B and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A's estate must pay the first instalment, and B, if he accept the legacy, must pay the remaining instalments.

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## PART XXIII.\*

### OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS.

**158.** If there be a bequest of something described in general

<p>Bequest of thing described in general terms.</p>	<p>terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.</p>
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#### *Illustrations.*

(a.) A bequeaths to B a pair of carriage-horses, or a diamond-ring. The executor must provide the legatee with such articles if the state of the assets will allow it.

(b.) A bequeaths to B "his pair of carriage-horses." A had no carriage-horses at the time of his death. The legacy fails.

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## PART XXIV.\*

### OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND.

**159.** Where the interest or produce of a fund is bequeathed

<p>Bequest of interest or produce of fund.</p>	<p>to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.</p>
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#### *Illustrations.*

(a.) A bequeaths to B the interest of his five per cent. promissory notes of the Government of India. There is no other clause in the will affecting

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\* Parts XXIII. and XXIV. apply to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

those securities. B is entitled to A's five per cent. promissory notes of the Government of India.

(b.) A bequeaths the interest of his  $5\frac{1}{2}$  per cent. promissory notes of the Government of India to B for his life, and after his death to C. B is entitled to the interest of the notes during his life; and C is entitled to the notes upon B's death.

(c.) A bequeaths to B the rents of his lands at X. B is entitled to the lands.

## PART XXV.\*

### OF BEQUESTS OF ANNUITIES.

**160.** Where an annuity is created by will, the legatee is entitled to receive it for his life only unless a contrary intention appears by the will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Annuity created by will payable for life only unless contrary intention appears by will.

#### *Illustrations.*

(a.) A bequeaths to B 500 rupees a year. B is entitled, during his life, to receive the annual sum of 500 rupees.

(b.) A bequeaths to B the sum of 500 rupees monthly. B is entitled during his life to receive the sum of 500 rupees every month.

(c.) A bequeaths an annuity of 500 rupees to B for life, and, on B's death, to C. B is entitled to an annuity of 500 rupees during his life. C, if he survives B, is entitled to an annuity of 500 rupees from B's death until his own death.

**161.** Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person on the testator's death, the legacy vests in interest in the legatee, and he is entitled, at his option, to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

Period of vesting where will directs that annuity be provided out of proceeds of property, or out of property generally, or where money bequeathed to be invested in purchase of annuity.

\* Part XXV. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustrations.*

(a.) A by his will directs that his executors shall, out of his property purchase an annuity of 1,000 rupees for B. B is entitled, at his option, to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(b.) A bequeaths a fund to B for his life, and directs that, after B's death, it shall be laid out in the purchase of an annuity for C. B and C survive the testator. C dies in B's lifetime. On B's death the fund belongs to the representative of C.

**162.** Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

**163.** Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

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## PART XXVI.\*

### OF LEGACIES TO CREDITORS AND PORTIONERS.

**164.** Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the creditor *prima facie* entitled to legacy as well as debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

**165.** Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

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\* Part XXVI. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustration.*

A, by articles entered into in contemplation of his marriage with B, covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

**166.** No bequest shall be wholly or partially adeemed by a

No ademption by subsequent provision for legatee.      subsequent provision made by settlement or otherwise for the legatee.

*Illustrations.*

(a.) A bequeaths 20,000 rupees to his son B. He afterwards gives to B the sum of 20,000 rupees. The legacy is not thereby adeemed.

(b.) A bequeaths 40,000 rupees to B, his orphan niece whom, he had brought up from her infancy. Afterwards, on the occasion of B's marriage, A settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

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**PART XXVII.\*****OF ELECTION.****167.** Where a man, by his will, professes to dispose of some-

Circumstances in which election takes place.      thing which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition, or to dissent from it; and, in the latter case, he shall give up any benefits which may have been provided for him by the will.

**168.** The interest so relinquished shall devolve as if it had

Devolution of interest re- not been disposed of by the will in-  
linquished by owner.      favour of the legatee, subject, nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

**169.** This rule will apply whether the testator does or does

Testator's belief as to his not believe that which he professes to  
ownership immaterial.      dispose of by his will to be his own.

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\* Part XXVII. applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2.

*Illustrations.*

(a.) The farm of Sultanpur was the property of C. A bequeathed it to B, giving a legacy of 1,000 rupees to C. C has elected to retain his farm of Sultanpur, which is worth 800 rupees. C forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B, and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(b.) A bequeaths an estate to B in case B's elder brother (who is married and has children) shall leave no issue living at his death. A also bequeaths to C a jewel, which belongs to B. B must elect to give up the jewel, or to lose the estate.

(c.) A bequeaths to B 1,000 rupees, and to C an estate which will under a settlement, belong to B if his elder brother (who is married and has children) shall leave no issue living at his death. B must elect to give up the estate, or to lose the legacy.

(d.) A, a person of the age of 18, domiciled in British India, but owning real property in England, to which C is heir-at-law, bequeaths a legacy to C, and, subject thereto, devises and bequeaths to B "all his property whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the will. C may claim his legacy without giving up the real property in England.

Bequest for man's benefit how regarded for purpose of election.

**170.** A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

*Illustration.*

The farm of Sultanpur Khurd being the property of B, A bequeathed it to C; and bequeathed another farm, called Sultanpur Buzurg, to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B's debts. B must elect whether he will abide by the will, or keep his farm of Sultanpur Khurd in opposition to it.

**171.** A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

Person deriving benefit indirectly not put to election.

*Illustration.*

The lands of Sultanpur are settled upon C for life, and, after his death, upon D, his only child. A bequeaths the lands of Sultanpur to B, and 1,000 rupees to C. C dies intestate shortly after the testator, and without having made any election. D takes out administration to C, and as administrator elects on behalf of C's estate to take under the will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B for the rents of the lands of Sultanpur which accrued after the death of the testator, and before the death of C. In his individual character he retains the lands of Sultanpur in opposition to the will.



Person taking in individual capacity under will may, in other character, elect to take in opposition.

**172.** A person who, in his individual capacity, takes a benefit under the will, may, in another character, elect to take in opposition to the will.

*Illustration.*

The estate of Sultanpur is settled upon A for life, and after his death upon B. A leaves the estate of Sultanpur to D, and 2,000 rupees to B, and 1,000 rupees to C, who is B's only child. B dies intestate shortly after the testator, without having made an election. C takes out administration to B, and as administrator elects to keep the estate of Sultanpur in opposition to the will, and to relinquish the legacy of 2,000 rupees. C may do this, and yet claim his legacy of 1,000 rupees under the will.

*Exception to the six last rules.*—Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee, which is also in terms disposed of by the will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the will.

*Illustration.*

Under A's marriage-settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Sultanpur during her life. A, by his will, bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Sultanpur, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

**173.** Acceptance of a benefit given by the will constitutes an

election by the legatee to take under the will if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

*Illustrations.*

(a.) A is owner of an estate called Sultanpur Khurd, and has a life-interest in another estate called Sultanpur Buzrug, to which, upon his death, his son B will be absolutely entitled. The will of A gives the estate of Sultanpur Khurd to B, and the estate of Sultanpur Buzrug to C. B, in ignorance of his own right to the estate of Sultanpur Buzrug, allows C to take possession of it, and enters into possession of the estate of Sultanpur Khurd. B has not confirmed the bequest of Sultanpur Buzrug to C.

(b.) B, the eldest son of A, is the possessor of an estate called Sultanpur. A bequeaths Sultanpur to C, and to B the residue of A's property. B

having been informed by A's executors that the residue will amount to 5,000 rupees, allows C to take possession of Sultanpur. He afterwards discovers that the residue does not amount to more than 500 rupees. B has not confirmed the bequest of the estate of Sultanpur to C.

**174.** Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

**175.** Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

*Illustration.*

A bequeaths to B an estate to which C is entitled, and to C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

**176.** If the legatee shall not, within one year after the death of the testator, signify to the testator's representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election;

and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

**177.** In case of disability, the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

## PART XXVIII.\*

## OF GIFTS IN CONTEMPLATION OF DEATH.

Property transferable by gift made in contemplation of death.

**173.** A man may dispose, by gift made in contemplation of death, of any moveable property which he could dispose of by will.

A gift is said to be made in contemplation of death where a man, who is ill, and expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such gift resumable.

Such a gift may be resumed by the giver.

It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

When it fails.

*Illustrations.*

(a.) A, being ill, and in expectation of death, delivers to B to be retained by him in case of A's death—

- a watch ;
- a bond granted by C to A ;
- a bank-note ;
- a promissory note of the Government of India endorsed in blank ;
- a bill of exchange endorsed in blank ;
- certain mortgage-deeds :

A dies of the illness during which he delivered these articles.

B is entitled to—

- the watch ;
- the debt secured by C's bond ;
- the bank-note ;
- the promissory note of the Government of India ;
- the bill of exchange ;
- the money secured by the mortgage-deeds.

(b.) A, being ill, and in expectation of death, delivers to B the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep

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\* This Part does not apply to Hindus.—See the Hindu Wills Act (XXI. of 1870).

them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

## PART XXIX.\*

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

**179.** The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property† of the deceased person vests in him as such.

Character and property of executor or administrator as such.

**180.** When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

Probate only to appointed executor.

**181.** Probate can be granted only to an executor appointed by the will.

Appointment, express or implied.

**182.** The appointment may be express or by necessary implication.‡

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\* Of Part XXIX., s. 187 applies to the wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2, as amended by the Probate and Administration Act (V. of 1881), s. 154.

As to grants of letters of administration and probates to the Administrator-General, see Act II. of 1874, ss. 14-33.

Nothing in Act X. of 1865 is to be taken to supersede or affect the rights or duties and privileges of the Administrator-General.—See *ibid.*, s. 66.

† This does not include property vested in the deceased as executor or administrator under Act X. of 1865.—12 Ben. 428, 429.

‡ 7 Bom. A. C. J. 64; 7 Ben. 563.

*Illustrations.*

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law.\* C, and adds, "but, should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

### 183. Probate cannot be granted to any person who is a minor

Persons to whom probate cannot be granted.

or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

### 184. When several executors are appointed, probate may be granted to them all simultaneously, or at different times.

*Illustration.*

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

### 185. If a codicil be discovered after the grant of probate, a

Separate probate of codicil discovered after grant of probate.

separate probate of that codicil may be granted to the executor if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate

Procedure when different executors appointed by codicil.

of the will must be revoked, and a new probate granted of the will and the codicil together.

### 186. When probate has been granted to several executors,

Accrual of representation to surviving executor.

and one of them dies, the entire representation of the testator accrues to

the surviving executor or executors.

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\* See s. 6 Act XXI. of 1870 (the Hindu Wills Act).†

them in case of A's death. A dies of the illness during which he delivered these articles. B is entitled to the trunk and its contents, or to A's goods of bulk in the warehouse.

(c.) A, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of B and C. The parcels are not delivered during the life of A. A dies of the illness during which he set aside the parcels. B and C are not entitled to the contents of the parcels.

## PART XXIX.\*

### OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

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Character and property of executor or administrator as such.

**180.** When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

**181.** Probate can be granted only to an executor appointed by the will.

Probate only to appointed executor.

**182.** The appointment may be express or by necessary implication.‡

Appointment, express or implied.

\* Of Part XXIX., s. 187 applies to the wills of Hindus, Jains, Sikhs, and Buddhists in the Lower Provinces of Bengal, and in the towns of Madras and Bombay.—See the Hindu Wills Act (XXI. of 1870), s. 2, as amended by the Probate and Administration Act (V. of 1881), s. 154.

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† This does not include property vested in the deceased as executor, or administrator under Act X. of 1865.—12 Ben. 428, 429.

‡ 7 Bom. A. C. J. 64; 7 Ben. 563.

*Illustrations.*

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law.\* C, and adds, "but, should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

**183.** Probate cannot be granted to any person who is a minor

Persons to whom probate cannot be granted.

or is of unsound mind, nor to a married woman without the previous consent of her husband.

Grant of probate to several executors simultaneously or at different times.

**184.** When several executors are appointed, probate may be granted to them all simultaneously, or at different times.

*Illustration.*

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

**185.** If a codicil be discovered after the grant of probate, a

Separate probate of codicil discovered after grant of probate.

separate probate of that codicil may be granted to the executor if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate

Procedure when different executors appointed by codicil.

of the will must be revoked, and a new probate granted of the will and the codicil together.

**186.** When probate has been granted to several executors,

Accrual of representation to surviving executor.

and one of them dies, the entire representation of the testator accrues to

the surviving executor or executors.

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\* See s. 6 Act XXI. of 1870 (the Hindu Wills Act).†

**187.\*** No right as executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction† “in British India”‡ shall have granted probate of the will under which the right is claimed, or shall have granted letters of administration “with the will, or with a copy of an authenticated copy of the will, annexed.”‡

**188.** Probate of a will, when granted, establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

**189.** Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to a married woman without the previous consent of her husband.

**190.§** No right to any part of the property of a person who has died intestate can be established in any Court of Justice unless letters of administration have first been granted by a Court of competent jurisdiction.

**191.** Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

**192.** Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

\* This section applies to the wills of Hindus, &c., in the Lower Provinces of Bengal and in the towns of Madras and Bombay.—*See the Hindu Wills Act (XXI. of 1870).*

† So far as regards the Administrator-General, the High Court at the Presidency-town is a Court of competent jurisdiction within the meaning of ss. 187 and 190, wheresoever within the Presidency the property to be comprised in the probate or letters of administration may be situate.—*See Act II. of 1874, s. 14.* For prohibition of charges for commission by executors or administrators other than the Administrator-General, *see ib.*, s. 56.

‡ In s. 187, the words first and next quoted have been substituted for the words “within the province” and “under the 180th section,” respectively, by the Repealing and Amending Act (VIII. of 1903). s. 2.

§ S. 190 does not apply to any part of the property of a Native Christian.—*See Act VII. of 1901.*



**193.** When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship ;

except that, when one or more of several executors have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

**194.** The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and, when made, shall preclude him from ever thereafter applying for probate of the will appointing him executor.

**195.** If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved, and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.\*

**196.** When the deceased has made a will, but has not appointed an executor ; or

when he has appointed an executor who is legally incapable, or refuses to act, or has died before the testator, or before he has proved the will ; or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased ;†

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

**197.** When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

\* See s. 6, Act XXI. of 1870.

† 12 B. L. R. 423, 427.

**198.** When there is no executor, and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate,\* or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

**199.** Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee until a citation has been issued and published in the manner hereinafter mentioned calling on the next-of-kin to accept or refuse letters of administration.

**200.** When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity are entitled to obtain letters of administration of his estate and effects in the order, and according to the rules, hereinafter stated.

**201.** If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

#### *Illustrations.*

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage-settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

**202.** If the Judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

**203.** If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons

\* See s. 6, Act XXI. of 1870.

who would be beneficially entitled to the estate according to the rules for the distribution of an intestate's estate :

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.  
 Proviso.

**204.** Those who stand in equal degree of kindred to the deceased are equally entitled to administration.\*  
 Title of kindred to administration.

**205.** The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.  
 Right of widower to administration of wife's estate.

**206.** When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.  
 Grant of administration to creditor.

**207.** Where the deceased has left property in British India, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of British India.  
 Administration where property left in British India.

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## PART XXX.†

### OF LIMITED GRANTS.

#### (a.)—*Grants limited in Duration.*

**208.** When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.  
 Probate of copy or draft of lost will.

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\* Ben. Short Notes of Cases, III.

† Compare Act V. of 1881, Ch. III., with sub-parts (a) to (f).

**209.** When the will has been lost or destroyed, and no copy has been made, nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

**210.** When the will is in the possession of a person residing out of the province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

**211.** Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

*(b).—Grants for the Use and Benefit of others having Right.*

**212.** When any executor is absent from the province in which application is made, and there is no executor within the province willing to act, letters of administration with the will annexed may be granted to the attorney\* of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

**213.** When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from the province, letters of administration, with the will annexed, may be granted to his attorney,\* limited as above mentioned.

**214.** When a person entitled to administration in case of intestacy is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

\* The attorney must be within the jurisdiction of the Court.—4 B. L. R., Ap., '49.

**215.** When a minor is sole executor or sole residuary legatee,

Administration during minority of sole executor or residuary legatee. letters of administration, with the will annexed, may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

**216.** When there are two or more minor executors, and no

Administration during minority of several executors or residuary legatees. executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

**217.** If a sole executor or a sole universal or residuary legatee,

Administration for use and benefit of lunatic *ius habens*. or a person who would be solely entitled to the estate of the intestate according to the rule\* for the distribution of intestates' estates, be a lunatic, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

**218.** Pending any suit touching the validity of the will of a

Administration *pendente lite*. deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court, and shall act under its direction.

(c.)—*For Special Purposes.*

**219.** If an executor be appointed for any limited purpose

Probate limited to purpose specified in will. specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

\* *Sic*, read *rules*.

**220.** If an executor appointed generally give an authority to Administration, with will an attorney to prove a will on his behalf, annexed, limited to parti- and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

**221.** Where a person dies, leaving property of which he was Administration limited to the sole or surviving trustee, or in which property in which person he had no beneficial interest on his own has beneficial interest. account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

**222.** When it is necessary that the representative of a person Administration limited to deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein, and carried into complete execution.

**223.** If, at the expiration of twelve months from the date of Administration limited to any probate or letters of administration, purpose of becoming party the executor or administrator to whom to suit to be brought against the same has been granted is absent from administrator. the province within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

**224.** In any case in which it may appear necessary for preserving the property of a deceased person, Administration limited to collection and preservation of deceased's property. the Court within whose district any of the property is situate, may grant to any person whom such Court may think fit, letters of administration limited to the collection and preservation of the property of the

deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

**225.** When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the province, and it shall appear to the Court to be

Appointment, as administrator, of person other than one who, under ordinary circumstances, would be entitled to administration.

necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator,

and in every such case letters of administration may be limited or not as the Judge shall think fit.

*(d.)—Grants with Exception.*

**226.** Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Probate or administration with will annexed, subject to exception.

**227.** Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

*(e.)—Grants of the Rest.*

**228.** Whenever a grant, with exception, of probate of letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

*(f.)—Grants of Effects unadministered.*

**229.** If the executor to whom probate has been granted have died, leaving a part of the testator's estate unadministered, a new representation.

Grant of effects unadministered.

tative may\* be appointed for the purpose of administering such part of the estate.

**230.** In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.†

**231.** When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.‡

(g.)—*Alteration in Grants.*§

**232.** Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

**233.** If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

[(h.)—*Revocation of Grants.*||

**234.** The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

*Explanation.*—Just cause is—

1. That the proceedings to obtain the grant were defective in substance;

\* 12 B. L. R. 428.

† 12 B. L. R. 428; see Hindu Wills Act (XXI. of 1870), s. 6.

‡ See Hindu Wills Act (XXI. of 1870), s. 6.

§ See Hindu Wills Act (XXI. of 1870), s. 6.

|| Compare the Probate and Administration Act (V. of 1881), Ch. IV.



*2nd*, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

*3rd*, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

*4th*, that the grant has become useless and inoperative through circumstances;

*\*5th*, that the person to whom the grant was made has wilful and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV. of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect.

#### *Illustrations.*

(a.) The Court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The will of which probate was obtained was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f.) Since probate was granted, a later will has been discovered.

(g.) Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h.) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

### PART XXXI†

#### OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

**235.** The District Judge shall have jurisdiction in granting Jurisdiction of District and revoking‡ probates and letters of Judge in granting and re- administration in all cases within his voking probates, &c. district.

\* Cl. 5 has been added by Act VI. of 1889, s. 2.

† Compare the Probate and Administration Act (V. of 1881), Ch. V.

‡ See 2 N.-W. P. 268.

# 241A.\* Probate and letters of administration may, upon

" Probate and letters of administration may be granted by Delegate. application for that purpose to any District Delegate, be granted by him in any case in which there is no contention if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death, resided within the jurisdiction of such Delegate.

# 242. Probate or letters of administration shall have effect

Conclusiveness of probate or letters of administration. over all the property and estate, moveable or immoveable, of the deceased, throughout the province in which the same is "or are"† granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

‡ Provided that probates and letters of administration granted

Effect of unlimited probates, &c., granted by a High Court§ after the first day of April 1875 shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

"Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had his fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the Province does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the whole of British India."||

\* S. 241A has been inserted by Act VI. of 1881, s. 3.

† The words quoted have been inserted by Act XII. of 1891, s. 2 (2) and Sch.

‡ This proviso has been added by Act XIII. of 1875, s. 2.

§ For definition of "High Court," see Act II. of 1877.

|| The proviso last quoted has been added by Act VIII. of 1903, s. 2 (2).

**242A.\*** (1) Where probate or letters of administration has or

Transmission to High Courts of certificate of grants under proviso to section 242. have been granted by a High Court or District Judge with the effect referred to in the proviso to section 242, the High Court or District Judge shall send a certificate thereof to the following Courts, namely:—

(a) when the grant has been made by a High Court, to each of the other High Courts,

(b) when the grant has been made by a District Judge, to the High Court to which such District Judge is subordinate, and to each of the other High Courts.

(2) Every certificate referred to in sub-section (1) shall be to the following effect, namely:—

‘I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of , the High Court of Judicature at [or as the case may be], granted probate of the will [or letters of administration of the estate] of C. D., late of , deceased, to E. F. of and G. H. of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the High Court receiving the same.

(3) Where any portion of the assets has been stated by the petitioner, as hereinafter provided in sections 244 and 246, to be situate within the jurisdiction of a District Judge in another Province, the Court required to send the certificate referred to in sub-section (1) shall send a copy thereof to such District Judge, and such copy shall be filed by the District Judge receiving the same.

**243.** The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration; Conclusiveness of application for probate or administration if properly made and verified.

and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property

within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

**244.** Application for probate shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will annexed, and stating—

the time of the testator's death,  
that the writing annexed is his last will and testament,  
that it was duly executed,

\*[the amount of assets which are likely to come to the petitioner's hands and

that the petitioner is the executor named in the will;]

and in addition to these particulars, when the application is to the District Judge, the petition shall further state that the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the Judge;

†[and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.]

‡ Where the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province and the District Judges within whose jurisdiction such assets are situate.

**245.** In cases wherein the will is written in any language other

than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court if the language be one for which a translator is appointed; or, if the will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by

Verification of translation by person other than Court translator.

that person in the following manner:—

\* As amended by Act VI. of 1880, s. 3.

† This paragraph has been added by Act VI. of 1881, s. 4.

‡ In s. 244, this paragraph has been added by Act VIII. of 1903, s. 2.

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

246. Applications for letters of administration shall be made by petition distinctly written as follows:—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

that the deceased left some property within the jurisdiction of the District Judge "or District Delegate" † to whom the application is made, and

the amount of assets which are likely to come to the petitioner's hands;

‡ and, when the application is to a District Delegate, the petition shall further state that the deceased, at the time of his death, resided within the jurisdiction of such Delegate.

§ Where the application is to the District Judge, and any portion of the assets likely to come to the petitioner's hands is situate in another Province, the petition shall further state the amount of such assets in each Province, and the District Judges within whose jurisdiction such assets are situate.

246A. || (1) Every person applying to any of the Courts mentioned in the proviso to section 242 for probate of a will or letters of administration of an estate intended to have effect throughout British India, shall state in his petition in addition to the matters respectively required by section 244 and section 246 of this Act, that, to the best of his belief, no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

\* As to the particulars to be stated where the Administrator-General applies for letters of administration, see Act II. of 1874, s. 16.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

‡ This paragraph has been added by Act VI. of 1881, s. 4.

§ This paragraph has been inserted by Act VIII. of 1903, s. 2 (4).

|| S. 246A has been inserted by Act VIII. of 1903, s. 2, (5).

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

(2) The Court to which any such application is made under the proviso to section 242 may, if it thinks fit, reject the same.

**247.** The petition for probate or letters of administration shall, in all cases, be subscribed by the Petitioner for probate or administration to be signed petitioner and his pleader (if any), and and verified. shall be verified by the petitioner in the following manner, or to the like effect:—

“I (A. B.,) the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.

**248.** Where the application is for probate, the petition shall Verification of petition for also be verified by at least one of the probate by one witness to will. witnesses to the will (when procurable), in the manner or to the effect following:—

“I (C. D.,) one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present, and saw the said testator affix his signature (or mark) thereto (*as the case may be*) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

**249.** If any petition or declaration which is hereby required to be verified shall contain any aver-  
r Punishment for false aver-  
ment in petition or declara-  
tion. ment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law\* for the time being in force for the punishment of giving or fabricating false evidence.

**250.** In all cases it shall be lawful for the District Judge District Judge may ex- “or District Delegate,”† if he shall amine petitioner in person, think proper,—

to examine the petitioner in person upon oath or solemn affirmation, and also

to require further evidence of the due execution of the will, or require further evidence. the right of the petitioner to the letters of administration, as the case may be, and

\* See the Indian Penal Code (Act XLV. of 1860), Ch. XI.

† The words quoted have been inserted by Act VI. of 1881, s. 9.

of 1865.]

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased and issue citations to inspect proceedings. to come and see the proceedings before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge "or District Delegate"\* issuing the same may direct.

† Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another Province, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

**251.†** Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

**252.** The caveat shall be to the following effect:—

Form of caveat.

"Let nothing be done in the matter of the estate of *A. B.*, late of \_\_\_\_\_, deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, without notice to *C. D.*, of \_\_\_\_\_."

\* The words quoted have been inserted by Act VI. of 1881, s. 9.

† This paragraph has been inserted by Act VIII. of 1903, s. 2 (6).

‡ S. 251 has been substituted for the one originally enacted by Act VI. of 1881, s. 5.

**253.** No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge "or officer"\* to whom the application has been made, "or notice has been given of its entry with some other Delegate"\* until after such notice to the person by whom the same has been entered, as the Court shall think reasonable.

**253A.†** A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

*Explanation.*—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

**253B.†** In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, or any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

**253C.†** In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made in order

\* In s. 253, the words quoted in both places have been inserted by Act VI. of 1881, s. 6.

† Ss. 253A, 253B, and 253C have been inserted by Act VI. of 1881, s. 7.



These words in brackets from "he having" to the end of the section have been substituted by Act VI. of 1889, s. 4.

day of \_\_\_\_\_, letters of administration (with or without the will annexed, *as the case may be*), of the property and credits of \_\_\_\_\_, late of \_\_\_\_\_, deceased, were granted to \_\_\_\_\_, the father (*or as the case may be*) of the deceased [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant, or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date, or within such further time as the Court may from time to time appoint.]”\*

**256.** “Every person to whom any grant of letters of administration *other than a grant under section 212* is committed”† shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being with one or more surety or sureties engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge shall, from time to time, by any general or special order direct.

**257.** The Court may, on application made by petition, and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors, or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

**258.** No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

\* These words in brackets from “he having” to the end of the sections have been substituted by Act VI. of 1889, s. 4.

† In s. 256, the words quoted, excepting the italicized ones added by s. 9 of Act V. of 1902, have been substituted by Act VI. of 1889, s. 6.

**259.** Every District Judge "or District Delegate"\* shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him among the records of his Court until some public registry for wills is established; and the Local Government shall make regulations† for the preservation and inspection of the wills so filed as aforesaid.

**260.** After any grant of probate or letters of administration, no other than the person to whom the grantee of probate or administration alone to sue, same shall have been granted, shall have &c., until same revoked. power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

**261.** In any case before the District Judge in which there is Procedure in contentious cases. contention,‡ the proceedings shall take, as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure,§ in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

**262.** Where any probate is or letters of administration are revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, Right of such executor or administrator to recoup himself.

\* The words quoted have been inserted by Act VI. of 1881, s. 9.

† For rules in force in (1) Assam, see Assam Manual of Local Rules and orders (Ed. 1893), pp. 7 to 9; (2) Burma, see Burma Rules Manual (Ed. 1897), p. 22; and (3) the North-Western Provinces, see North-Western Provinces and Oudh List of Local Rules and Orders (Ed. 1894), p. 32.

‡ See 2 N.-W. P. 268.

§ These references to Act VIII. of 1859 should now be read as applying to Act V. of 1908.—See s. 158 of the latter Act.

which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

**263.** Every order made by a District Judge by virtue of the Appeals from orders of powers hereby conferred upon him shall District Judge. be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure\* applicable to appeals.

**264.** The High Court shall have concurrent jurisdiction Concurrent jurisdiction of with the District Judge in the exercise High Court. of all the powers hereby conferred upon the District Judge.

## PART XXXII.†

### OF EXECUTORS OF THEIR OWN WRONG.

**265.** A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while Executor of his own wrong. there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

*Exceptions.—First.*—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral, or for the immediate necessities of his family or property, does not make an executor of his own wrong.

*Second.*—Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

### *Illustrations.*

(a.) A uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(b.) A, having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

\* This reference of Act VIII. of 1859 should now be read as applying to Act V. of 1908.—See s. 158 of the latter Act.

† Part XXXII. does not extend to Hindus, Jainas, Sikhs, or Buddhists—See the Hindu Wills Act (XXI. of 1870).

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

**266.** When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

### PART XXXIII.\*

#### OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR—

**267.** An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

**268.** All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators except causes of action for defamation, assault as defined in the Indian Penal Code,† or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

#### *Illustrations.*

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

\* Part XXXIII. does not extend to Hindus, Jainas, Sikhs, or Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881), Ch. VI.

† Act XLV. of 1860.

which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

**263.** Every order made by a District Judge by virtue of the Appeals from orders of powers hereby conferred upon him shall District Judge. be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure\* applicable to appeals.

**264.** The High Court shall have concurrent jurisdiction Concurrent jurisdiction of with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

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\* This reference of Act VIII. of 1859 should now be read as applying to Act V. of 1908.—See s. 158 of the latter Act.

† Part XXXII. does not extend to Hindus, Jainas, Sikhs, or Buddhists—See the Hindu Wills Act (XXI. of 1870).

(c.) A sues as executor of the deceased, not being such. He is an executor of his own wrong.

**266.** When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

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**268.** All demands whatsoever, and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators except causes of action for defamation, assault as defined in the Indian Penal Code,† or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

### Illustrations.

(a.) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(b.) A sues for divorce. A dies. The cause of action does not survive to his representative.

\* Part XXXIII. does not extend to Hindus, Jainas, Sikhs, or Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881), Ch. VI.

† Act XLV. of 1860.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

**277A.\*** In all cases where a grant has been made of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or administrator shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India, and the value of such property situate in each province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

**278.** The executor or administrator shall collect, with reasonable diligence, the property of the deceased, and the debts that were due to him at the time of his death.

**279.** Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

**280.** The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

**281.** Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan, or domestic servant, are next to be paid, and then the other debts of the deceased.

**282.** Save as aforesaid, no creditor is to have a right of priority over another by reason that his debt is secured by an instrument under seal, or on any other account.

Save as aforesaid, all debts to be paid equally and rateably.

\* S. 277A has been inserted by Act VIII. of 1903, s. 2 (7):



But the executor or administrator shall pay all such debts\* as he knows† of, including his own, equally and rateably,‡ as far as the assests of the deceased will extend.

**283.** If the domicile of the deceased was not in British India, the application of his moveable property to the payment of his debts is to be regulated by the law of "British India."§

Application of moveable property to payment of debts where domicile not in British India.

\* \* \* \* \*

**284** || No creditor who has received payment of a part of his debt by virtue of the last preceding section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Creditor paid in part under section 283 to bring payment into account before sharing in proceeds of immoveable property.

#### *Illustrations.*

A dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5 000 rupees and immoveable property to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amount which may remain due to them.

Debts to be paid before legacies.

**235.** Debts of every description must be paid before any legacy.

**286.** If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

\* A liability to pay calls is a debt.—8 Bom., O. C. J., 20.

† I. e., actually, not constructively.—8 Bom., O. C. J., 20.

‡ 8 Bom., O. C. J., 20.

§ The words quoted have been substituted for the words "the country in which he was domiciled" by Act VI. of 1889, s. 9, cl. (1) : and the illustration originally attached to this section has been repealed by cl. (2) of the same section.

|| S. 284, together with its *Illustration*, seems to be an anomaly after the amendment of s. 283.

**287.** If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions,

and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself, or to any person for whom he is a trustee.

Abatement of general legacies.  
Executor not to pay one legatee in preference to another.

**288.** Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

**289.** Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and, if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

**290.** If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

#### *Illustration.*

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

**291.** For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity, when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

## PART XXXV.\*

## OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

**292.** The assent of the executor is necessary to complete a legatee's title to his legacy.

*Illustrations.*

(a.) A by his will bequeaths to B his Government Paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b.) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

**293.** The assent of the executor to a specific bequest shall be sufficient to divest his interest as sent to specific legacy. executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

*Illustrations.*

(a.) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b.) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c.) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d.) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e.) A person to whom a specific article has been bequeathed takes possession of it, and retains it without any objection on the part of the executor. His assent may be presumed.

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\* Part XXXV. does not extend to Hindus, Jainas, Sikhs or Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881); Ch. VIII.

**284.** The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

*Illustrations.*

(a.) A bequeaths to B his lands of Sultanpur, which, at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

**295.** When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be expressed or implied.

Assent shall be implied if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

*Illustration.*

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

**296.** The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

*Illustrations.*

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

**297.** An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

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## PART XXXVI.\*

### OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

**298.** Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

*Commencement of annuity when no time fixed by will.*

**299.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

*When annuity, to be paid quarterly or monthly, first falls due.*

**300.** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

*Dates of successive payments when first payment directed to be made within given time, or on day certain.*

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

*Apportionment where annuitant dies between times of payment.*

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\* Part XXXVI. does not extend to Hindus, Jainas, Sikhs or Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881), Ch. IX.

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**284.** The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

*Illustrations.*

(a.) A bequeaths to B his lands of Sultanpur, which, at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall, within a limited time, pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b.) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

**285.** When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it in the same way as it is required when the bequest is to another person, and his assent may in like manner be expressed or implied.

Assent shall be implied if, in his manner of administering the property, he does any act which is referable to his character of legatee, and is not referable to his character of executor.

Implied assent.

*Illustration.*

An executor takes the rent of a house, or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent,

**286.** The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

*Illustrations.*

(a.) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b.) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to his legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

**287.** An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

*Illustration.*

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

## PART XXXVI.\*

## OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

**298.** Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

*Commencement of annuity when no time fixed by will.*

**299.** Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

*When annuity, to be paid quarterly or monthly, first falls due.*

**300.** Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

*Dates of successive payments when first payment directed to be made within given time, or on day certain.*

and, if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

*Apportionment where annuitant dies between times of payment.*

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\* Part XXXVI. does not extend to Hindus, Jaines, Sikhs or Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881), Ch. IX.

## PART XXXVII.\*

## ON THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

301. Where a legacy, not being a specific legacy, is given

Investment of sum bequeathed where legacy, not specific, given for life. for life, the sum bequeathed, at the end of the year, be invested in securities as the High Court may,

any general rule to be made from time to time, and the proceeds thereof shall be paid to the legatee shall accrue due.

302. Where a general legacy is given

Investment of general legacy to be paid at future time. time, the executor shall be sufficient to meet the kind mentioned in the section.

Intermediate interest.

The interest part of the residue.

303. Where an annuity is given,

Procedure when no fund charged with, or appropriated for annuity. with its payment will to answer the cost of the specific charge; or

if no such annuity can be obtained, the executor shall be invested in securities as the High Court may, by a decree from time to time, authorize or direct.

304. Where a bequest is contingent

Transfer to residuary legatee of contingent bequest. bound to the residue of the estate.

legatee on his giving sufficient security for the residue of the estate if it shall become due.

305. Where the testator has left

Investment of residue bequeathed for life, without direction to invest in particular securities. estate direct in securities the testator may think fit.

\* Part XXXVII. does not extend to Buddhists.—See the Hindu Wills Act, 1929, and the Probate and Administration Act (V. of 1925).



in such securities as the High Court may for the time being regard as good securities shall be converted into money, and invested in such securities.

**306.** Where the testator has bequeathed the residue of his

Investment of residue bequeathed for life, with direction to invest in specified securities.

estate to a person for life, with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money, and invested in such securities.

**307.** Such conversion and investment as are contemplated by

Time and manner of conversion and investment.

the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit;

and, until such conversion and investment shall be completed,

Interest payable until investment.

the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

**308.** Where, by the terms of a bequest, the legatee is entitled

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom "or by whose District Delegate"\* the probate was, or letters of administration with the will annexed were, granted to the account of the legatee unless the legatee be a ward of the Court of Wards;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account: and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid:

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon,

\* In s. 308, the words quoted have been inserted by s. 8 of Act VI. of 1881.

shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

## PART XXX VIII.\*

### OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.      **309.** The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

*Exception.*—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

#### *Illustrations.*

(a.) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor, the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b.) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c.) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

**310.** The legatee under a general residuary bequest is entitled to the produce of the residuary fund to produce of residuary fund. from the testator's death.

*Exception.*—A general residuary bequest, contingent in its terms, does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

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\* Part XXXVIII. does not extend to Hindus, Jainas, Sikhs, and Buddhists.—See the Hindu Wills Act (XXI. of 1870). Compare the Probate and Administration Act (V. of 1881), Ch. XI.

*Illustrations.*

(a.) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b.) The testator bequeaths the residue of his property to A, when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

**311.** Where no time has been fixed for the payment of a

Interest when no time fixed for payment of general legacy. interest begins to run from the expiration of one year from the testator's death.

*Exceptions.*—(1.) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2.) When the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3.) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

**312.** Where a time has been fixed for the payment of a

Interest when time fixed. general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

*Exception.*—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator unless a specific sum is given by the will for maintenance.

**313.** The rate of interest shall be

Rate of interest.

four per cent. per annum.

**314.** No interest is payable on the arrears of an annuity

No interest on arrears of annuity within first year after testator's death. within the first year from the death of the testator although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

**324.** The refunding of one legatee to another shall not exceed the sum by which the satisfied legatee ought to have been reduced if the estate had been properly administered.

*Illustration.*

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and, if properly administered, would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

**325.** The refunding shall, in all cases, be without interest.

**326.** The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

**326A.\*** Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there, and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 320, and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

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\* S. 326A has been inserted by Act II. of 1890, s. 9.

PART XL.\*

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

**327.** When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage, so occasioned.

Liability of executor or administrator for devastation.

*Illustrations.*

(a.) The executor pays out of the estate an unfounded claim. He is liable to make good the loss.

(b.) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss.

(c.) The deceased had a lease of less value than the rent payable for it but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

**328.** When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Liability of executor or administrator for neglect to get in any part of property.

*Illustrations.*

(a.) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount.

(b.) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

PART XLI.†

MISCELLANEOUS.

**329.** *Stamps and Fees.* [Repealed by Act VII. of 1870.]

**330.** *Saving as to Administrator-General.* [Repealed by Act XXIV. of 1867.]

\* Part XL. does not extend to Hindus, Jains, Sikhs, or Buddhists.— See the Hindu Wills Act (XXI. of 1870.) Compare the Probate and Administration Act (V. of 1881), Ch. XIII.

† Part XLI. does not extend to Hindus, Jains, Sikhs or Buddhists.— See the Hindu Wills Act (XXI. of 1870.)

**331.** The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu, Mahomedan, or Buddhist,\* nor shall they apply to any will made, or any intestacy occurring, before the first day of January 1866.

The 4th section shall not apply to any marriage contracted before the same day.

**332.** The Governor-General of India in Council shall, from time to time, have power, by an order, either retrospectively from the passing of this Act, or prospectively, to exempt from the operation of the whole or any part of this Act the members of any race, sect, or tribe in British India, or any part of such race, sect, or tribe, to whom he may consider it impossible or inexpedient to apply the provisions of this Act, or of the part of the Act mentioned in the order.

The Governor General of India in Council shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

\* As to wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and the towns of Madras and Bombay, *see* now the Hindu Wills Act (XXI. of 1870), as amended by Act V. of 1881, s. 154.

As to intestate succession among Parsis, *see* the Parsi Succession Act (XXI. of 1865).

As to moveable property under Rs. 200 in value of persons dying intestate in a Presidency-town, when taken charge of by the Police for safe custody, *see* the Administrator-Generals Act (II. of 1874).

As to probate and letters of administration in the case of Hindus, Mahomedans, and Buddhists, and persons exempted under s. 332, *see* the Probate and Administration Act (V. of 1881).

† The following classes have been exempted from the operation of the whole of the Act retrospectively from the passing of the Act, *vis.* :—

all Native Christians in the Province of Coorg—*see* Notification No. 204, dated 23rd July 1868, in *Gazette of India*, 1868, p. 1094 :

the Jews of Aden—*see* Notification No. 1651, dated 20th November 1886, Bombay List of Local Rules and Orders Ed., 1886, p. 2 ;

the members of the races known as Khasias and Syntengs (dwelling in the Chief Commissioner-ship of Assam)—*see* Notification No. 1671, dated 20th October 1887, Assam List of Local Rules and Orders, Ed. 1893, p. 6.

As to probate and letters of administration in the case of persons so exempted, *see* the Probate and Administration Act (V. of 1881).

All orders and revocations made under this section shall be published in the *Gazette of India*.

**333.\*** (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment of either description for a term which may extend to three months, or with both.

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## SCHEDULE.

(*Stamps and Fees.*)

[*Repealed by Act VII. of 1870.*]

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\* S. 333 has been added by Act VI. of 1889, s. 10.





# THE SUCCESSION CERTIFICATE ACT, 1889

(Act VII. of 1889).\*

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1889.

*An Act to facilitate the Collection of Debts on Successions, and afford Protection to Parties paying Debts to the Representatives of Deceased Persons.*

WHEREAS it is expedient to facilitate the collection of debts on successions and afford protection to parties paying debts to the representatives of deceased persons; It is hereby enacted as follows:—

Title, commencement, extent, and application.      1. (1) This Act may be called the Succession Certificate Act, 1889.

(2) It shall come into force on the first day of May, 1889; and

(3) It extends to the whole of British India.†

(4) But a certificate shall not be granted thereunder with respect to any debt or security to which a right can be established by probate or letters of administration under the Indian Succession Act, 1865,‡ or by probate of a will to which the Hindu Wills Act,

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1888, Pt. V., p. 60; for Report of the Select Committee, see *ibid.*, 1889, Pt. V., p. 45; and for Proceedings in Council, see *ibid.*, 1888, Pt. VI., pp. 92, 136, and *ibid.*, 1889, Pt. VI., p. 48.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

The Act has also been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3; and in the Angul District by the Angul District Regulation (I. of 1894), s. 3.

It has been declared in force in the Santal Parganas by notification under s. 3 of the Santal Parganas Settlement Regulation (III. of 1872) as amended by the Santal Parganas Laws Regulation (III. of 1886).

† The words, "inclusive of Upper Burma (except the Shan States)," have been repealed by the Fifth Schedule to the Burma Laws Act (XIII. of 1898), and, therefore, have been omitted here.

‡ Act X. of 1865.

1870,\* applies, or by letters of administration with a copy of such a will annexed.†

2. (1) The enactments specified in the First Schedule are repealed to the extent mentioned in the third column thereof.

Repeal.

(2) But nothing in this Act shall affect any certificate granted before the commencement of this Act under Act XXVII. of 1860‡ or any enactment repealed by that act.

(3) Any enactment except this Act and section 152 of the Probate and Administration Act, 1881,§ or any document referring to any enactment repealed by this Act shall, so far as may be, construed to refer to this Act or to the corresponding portion thereof.

3. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) "District Court," subject to the other provisions of this Act and to the provisions of proviso (b) to section 23 of the Punjab Courts Act, 1884,|| and of any other like enactment for the time being in force, means a Court presided over by a District Judge and

(2) "security" means—

(a) any promissory note, debenture, stock, or other security of the Government of India ;

(b) any bond, debenture, or annuity charged by the Imperial Parliament on the revenues of India ;

(c) any stock or debenture of, or share in, a company or other incorporated institution ;

(d) any debenture or other security for money issued by, or on behalf of, a local authority ;

\* Act XXI. of 1870.

† S. 5 of Act VII. of 1901 provides as follows :—

"Nothing contained in section 1, sub-section (4), of the Succession Certificate Act, 1889, shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Native Christian, or to any part thereof with respect to any debt or security, by reason that a right thereto can be established by letters of administration under the Indian Succession Act, 1865."

‡ Repealed by this Act.

§ Act V. of 1881.

|| Act XVIII. of 1884.

- (e) any other security which the Governor-General in Council may, by notification in the *Gazette of India*, declare to be a security for the purposes of this Act.

Proof of representative title  
a condition precedent to re-  
covery through the Courts of  
debts from debtors of deceas-  
ed persons.

#### 4. (1) No Court shall—

- (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person, or to any part thereof, or
- (b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt,

except on the production, by the person so claiming, of—

- (i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or
- (ii) a certificate granted under section 36 or section 37 of the Administrator-Generals Act, 1874,\* and having the debt mentioned therein, or
- (iii) a certificate granted under this Act, and having the debt specified therein, or
- (iv) a certificate granted under Act XXVII. of 1860† or an enactment repealed by that Act, or
- (v) a certificate granted under the Regulation of the Bombay Code No. VIII. of 1827, and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word “debt” in sub-section (1) includes any debt except rent, revenue, or profits payable in respect of land used for agricultural purposes.

5. The District Court within the jurisdiction of which the Court having jurisdiction deceased ordinarily resided at the time to grant certificate. of his death, or, if, at that time, he had no fixed place of residence, then within the jurisdiction of which

\* Act II. of 1874.

† Repealed by this Act.

any part of the property of the deceased may be found, may grant a certificate under this Act.

6. (1) Application for such a certificate must be made to the District Court by a petition signed and verified by, or on behalf of, the applicant in the manner prescribed by the Code of Civil Procedure\* for the signing and verification of a plaint by, or on behalf of, a plaintiff, and setting forth the following particulars, namely—

- (a) the time of the death of the deceased ;
- (b) the ordinary residence of the deceased at the time of his death, and, if such residence was not within the local limits of the jurisdiction of the Court to which the application is made, then the property of the deceased within those limits ;
- (c) the family or other near relatives of the deceased and their respective residences ;
- (d) the right in which the petitioner claims ;
- (e) the absence of any impediment under section 1, subsection (4), or under any other provision of this Act or any other enactment, to the grant of the certificate, or to the validity thereof if it were granted ; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

7. (1) If the District Court is satisfied that there is ground for entertaining the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the day fixed for the hearing—

- (a) to be served on any person to whom, in the opinion of the Court, special notice of the application should be given, and

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\* Act XIV. of 1882 (see, now, Act V. of 1908).

(b) to be posted on some conspicuous part of the Court-house, and published in such other manner, if any, as the Court, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Court decides the right thereto to belong to the applicant, it shall make an order for the grant of the certificate to him.

(3) If the Court cannot decide the right to the certificate without determining questions of law or fact, which seem to it to be too intricate and difficult for determination in a summary proceeding, it may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Court that more than one of such applicants are interested in the estate of the deceased, the Court may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

8. When the District Court grants a certificate, it shall therein specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted—

Contents of certificate.

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on, and to negotiate or transfer, the securities or any of them.

9. (1) The District Court shall, in any case in which it proposes

Requisition of security from grantee of certificate. to proceed under section 7, sub-section (3) or sub-section (4), and may, in any

other case, require, as a condition precedent to the granting of a certificate, that the person to whom it proposes to make the grant shall give to the Judge of the Court, to ensure for the benefit of the Judge for the time being, a bond with one or more surety or sureties or other sufficient security for rendering an account of debts and securities received by him, and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Court may, on application made by petition, and on cause shown to its satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder.

**10.** (1) A District Court may from time to time, on the application of the holder of a certificate under this Act, extend the certificate to any debt or security not originally specified therein; and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein.

(2) Upon the extension of a certificate, powers with respect to the receiving of interest or dividends on, or the negotiation or transfer of, any security to which the certificate has been extended may be conferred, and a bond or further bond or other security for the purposes mentioned in the last-foregoing section may be required, in the same manner as upon the original grant of a certificate.

**11** Certificates shall be granted and extensions of certificates shall be made, as nearly as circumstances admit, in the forms set forth in the Second Schedule.

**12.** Where a District Court has not conferred on the holder of a certificate any power with respect to a security specified in the certificate, or has only empowered him to receive interest or dividends on, or to negotiate or transfer the security, the Court may, on application made by petition, and on cause shown to its satisfaction, amend the certificate by conferring any of the powers mentioned in section 8, or by substituting any one for any other of those powers.

**13.** (1) For articles 11 and 12 of the First Schedule to the Court Fees Act, 1870,\* the following shall be substituted, namely:—

*[Inserted in the Court Fees Act.]*

\* Act VII. of 1870.

(2) In the Court Fees Act, 1870,\* section 19, clause viii., for the words and figures, "and certificate mentioned in the First Schedule to this Act annexed, No. 12", the words and figures, "and, save as regards debts and securities, a certificate under Bombay Regulation VIII. of 1827", shall be substituted.

**14. (1)** Every application for a certificate, or for the extension of a certificate, must be accompanied by a deposit of a sum equal to the fee payable, under the First Schedule to the Court Fees Act, 1870,\* in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1), and not expended under sub-section (2), shall be refunded to the person who deposited it.

Local extent of certificate.

**15.** A certificate under this Act shall have effect throughout the whole of British India.

**16.** Subject to the provisions of this Act, the certificate of the District Court shall, with respect to the debts and securities specified therein,

Effect of certificate.

be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 1, sub-section (4), or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

**17.** Where a certificate in the form, as nearly as circumstances admit, of the Second Schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative, the certificate shall, when stamped in accordance with the provisions of the Court Fees Act, 1870,\* with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act.

\* Act VII. of 1870.

**18.** A certificate granted under this Act may be revoked for any of the following causes, namely—

Revocation of certificate.

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;
- (e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

**19.** (1) Subject to the other provisions of this Act, an appeal

Appeal.

shall lie to the High Court from an order of a District Court granting, refusing, or revoking a certificate under this Act, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted, and direct the District Court, on application being made therefor, to grant it accordingly in supersession of the certificate, if any, already granted.

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure.\*

(3) Subject to the provisions of sub-section (1) and of Chapters XLVI. and XLVII. of the Code of Civil Procedure\* as applied by section 647 of that Code, an order of a District Court under this Act shall be final.

**20.** Save as provided by this Act, a certificate granted there-

Effect on certificate of previous certificate, probate, or letters of administration.

under in respect of any of the effects of a deceased person shall be invalid if there has been a previous grant of such

\* Act XIV. of 1882 (*see now*, Act V. of 1908 and the portion thereof corresponding to s. 647 of Act XIV. of 1882).



a certificate or of probate or letters of administration in respect of the estate of the deceased person, and if such previous grant is in force.

**21.** (1) A grant of probate or letters of administration under the Probate and Administration Act, 1881,\* in respect of an estate, shall be deemed to supersede any certificate previously granted under this Act in respect of any debts or securities included in the estate.

(2) When, at the time of the grant of the probate or letters, any suit or other proceeding instituted by the holder of the certificate regarding any such debt or security is pending, the person to whom the grant is made shall, on applying to the Court in which the suit or proceeding is pending, be entitled to take the place of the holder of the certificate in the suit or proceeding.

**22** Where a certificate under this Act has been superseded or is invalid by reason of the certificate having been revoked under section 18, or by reason of the grant of a certificate to a person named in an appellate order under section 19, or by reason of a certificate having been previously granted, or by reason of a grant of probate or letters of administration, or for any other cause, all payments made or dealings had, as regards debts and securities specified in the superseded or invalid certificate, to or with the holder of that certificate in ignorance of its supersession or invalidity, shall be held good against claims under any other certificate, or under the probate or letters of administration.

**23.** (1) Where a certificate has been granted under this Act or Act XXVII. of 1860,† or a grant of probate or letters of administration has been made, a curator appointed under Act XIX. of 1841‡ shall not exercise any authority lawfully belonging to the holder of the certificate, or to the executor or administrator :

(2) But persons who have paid debts or rents to a curator authorized by a Court to receive them shall be indemnified, and the curator shall be responsible for the payment thereof to the person who has obtained the certificate, probate, or letters of administration, as the case may be.

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\* Act V. of 1881. † Repealed by this Act.

‡ The Succession (Property Protection) Act, 1841.

**24.** Any probate or letters of administration granted before the first day of April, 1881, by any Supreme or High Court of Judicature, or by the Court of a Recorder in Burma, in any case in which the deceased person was not a British subject within the meaning of that expression as used in the Charters of the Supreme Courts of Judicature, and in which any assets belonging to him were at the time of his death within the local limits of the jurisdiction of the Court, shall, for the purpose of the recovery of debts, the protection of persons paying debts, and the negotiation or transfer of securities included in the estate of the deceased, be deemed to have and to have had the effect which a grant of probate or letters of administration has under the Indian Succession Act, 1865 :\*

Provided that nothing in this section shall be construed to validate any disposal of property by an executor or administrator which has, before the commencement of this Act, been declared by any competent Court to be invalid.

**25.** No decision under this Act upon any question of right between any parties shall be held to bar the trial of the same question in any suit, or in any other proceeding, between the same parties, and nothing in this Act shall be construed to affect the liability of any person who may receive the whole or any part of any debt or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.

**26.** (1) The Local Government may, by notification in the official Gazette, invest any Court inferior in grade to a District Court with the functions of a District Court under this Act, and may cancel or vary any such notification.†

\* Act X. of 1865.

† For notifications issued under this sub-section for—

- (1) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 263 ;
- (2) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 495-497 ;
- (3) Madras, *see* Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 227 and 228 ;
- (4) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 126.

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court in the exercise of all the powers conferred by this Act upon the District Court, and the provisions of this Act relating to the District Court shall apply to such an inferior Court as if it were a District Court :

Provided that an appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 19 shall lie to the District Court, and not to the High Court ; and that the District Court may, if it thinks fit, by its order on the appeal, make any such declaration and direction as that sub-section authorizes the High Court to make by its order on an appeal from an order of a District Court.

(3) An order of a District Court on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions of Chapters XLVI. and XLVII. of the Code of Civil Procedure\* as applied by section 647 of that Code, be final.

(4) The District Court may withdraw any proceedings under this Act from an inferior Court, and may either itself dispose of them, or transfer them to another such Court established within the local limits of the jurisdiction of the District Court, and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior Court specially or any class of such Courts in any local area.

(6) Any Civil Court which, for any of the purposes of any enactment, is subordinate to, or subject to the control of, a District Court, shall, for the purposes of this section, be deemed to be a Court inferior in grade to a District Court.

**27. (1)** When a certificate under this Act has been superseded

Surrender of superseded ed or is invalid from any of the causes and invalid certificates. mentioned in section 22, the holder thereof shall, on the requisition of the Court which granted it, deliver it up to that Court.

(2) If he wilfully, and without reasonable cause, omits so to deliver it up, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both.

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\* Act XIV. of 1882 (*see*, now, Act V. of 1908 and its portion corresponding to s. 647 of Act XIV. of 1882).

28. Notwithstanding anything in the Regulation of the Bombay Code No. VIII. of 1827, the provisions of section 3, section 6, sub-section (1), clause (f), and sections 8, 9, 10, 11, 12, 14, 16, 18, 19, 25, 26, and 27 of this Act, with respect to certificates under this Act and applications therefor, and of section 98 of the Probate and Administration Act, 1881,\* with respect to the exhibition of inventories and accounts by executors and administrators, shall, so far as they can be made applicable, apply, respectively, to certificates granted under that Regulation, and applications made for certificates thereunder, after the commencement of this Act, and to the exhibition of inventories and accounts by the holders of such certificates so granted.

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\* Act V. of 1881.

## THE FIRST SCHEDULE.

## ENACTMENTS REPEALED.

(See Section 2.)

Number and year.	Subject or title.	Extent of repeal.
<i>Acts of the Governor-General in Council.</i>		
XXVII. of 1860.	Collection of Debts on Successions.	So much as has not been repealed.
XIV. of 1869 ...	Bombay Civil Courts Act, 1869.	In section 16, from and inclusive of the words and figures, "Bombay Regulation VIII. of 1827," down to and inclusive of the words, "representatives of deceased persons) and."
XV. of 1874 ...	Laws Local Extent Act, 1874.	So much as relates to Act XXVII. of 1860.
XIII. of 1879 ...	Oudh Civil Courts Act, 1879.	Section 25, clause (3), relating to applications for certificates under Act XXVII. of 1860.
V. of 1881 ...	Probate and Administration Act, 1881.	Sections 151 and 153.
XVIII. of 1884.	Punjab Courts Act, 1884.	Section 29, sub-section (1), clause (a).
XII. of 1887 ...	Bengal, North-Western Provinces, and Assam Civil Courts Act, 1887.	Section 23, sub-section (2), clause (c).

*Act of the Lieutenant-Governor of Bengal in Council.*

VII. of 1880* ...	Public Demands Recovery Act, 1880.	In section 7, clause (3), the words, "and the note to paragraph 12 of Schedule I."
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\* Since entirely repealed by the Public Demands Recovery Act (Ben. Act I. of 1895).

## THE SECOND SCHEDULE.

## FORMS OF CERTIFICATE AND EXTENDED CERTIFICATE.

(See Section 11.)

In the Court of

To A. B.

Whereas you applied on the \_\_\_\_\_ day of \_\_\_\_\_ for a certificate under the Succession Certificate Act, 1889, in respect of the following debts and securities, namely :—

*Debts.*

Serial number.	Name of debtor.	Amount of debt, including interest on date of application for certificate.	Description and date of instrument, if any, by which the debt is secured.

*Securities.*

Serial number.	DESCRIPTION.			Market-value of security on date of application for certificate.
	Distinguishing number or letter of security.	Name, title, or class of security.	Amount or par value of security.	

This certificate is accordingly granted to you, and empowers you to collect those debts [and] [to receive] [interest] [dividends] [on] [to negotiate] [to transfer] [those securities],

Dated this \_\_\_\_\_ day of \_\_\_\_\_

District Judge.

THE SECOND SCHEDULE—*Continued.*

In the Court of  
 On the application of *A. B.* made to me on the \_\_\_\_\_ day  
 of \_\_\_\_\_, I hereby extend this certificate to the following debts and  
 securities, namely:—

*Debts.*

Serial number.	Name of debtor.	Amount of debt, includ- ing interest, on date of application for exten- sion.	Description and date of instrument, if any, by which the debt is ac- cured.

*Securities.*

Serial number.	DESCRIPTION.			Market-value of security on date of application for extension.
	Distinguish- ing number or letter of security.	Name, title, or class of security.	Amount or par value of security.	

This extension empowers *A. B.* to collect those debts [and] [to receive]  
 [interest] [dividends] [on] [to negotiate] [to transfer] [those securities].

Dated this \_\_\_\_\_ day of \_\_\_\_\_

*District Judge.*





# ACT XIX. OF 1841.

## The Succession (Property Protection) Act, 1841.\*

PASSED ON THE 6TH SEPTEMBER 1841.

*An Act for the Protection of Moveable and Immoveable Property against Wrongful Possession in cases of Successions.*

1. Whereas much inconvenience has been experienced where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift of succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptation for the employment of force or fraud in order to obtain possession: and whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit: and whereas such summary

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\* This is the short title given by the Indian Short Titles Act (XIV. of 1897).

The Succession (Property Protection) Act (XIX. of 1841) has been declared to be in force in the whole of British India (except as regards the Scheduled Districts) by the Laws Local Extent Act (XV. 1874), s. 3.

Act XIX. of 1841 has been declared by force in the Arakan Hill District (with modifications and with the exception of s. 16) by the Arakan Hill District Laws regulation (IX. of 1874).

The Act has been extended to Sindh by Bom. Act XII. of 1866 (Courts, Sindh), s. 12.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874) to be in force in the following Scheduled Districts, namely:—

- (1) The Taluqs of Bhadrachalam and Rakapilli and the Rampa Country (see Gazette of India, 1879, Pt. I., p. 630):
- (2) Sindh (see Gazette of India, 1880, Pt. I., p. 672):
- (3) West Jalpaiguri (see Gazette of India, 1881, Pt. I., p. 74):

suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession, will be too tardy a remedy for obviating them all, especially as regards moveable property : and whereas it may be expedient, prior to the determination of the summary suit, to appoint a curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste, or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case : and whereas it will be very inconvenient to interfere with successions to estates by the appointment of curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit :—

- (4) The District of Hazaribagh (see Gazette of India, 1881, Pt. I, p. 507) :
- (5) The District of Lohardaga (see Gazette of India, 1881, Pt. I, p. 508) :
- (6) The District Manbhum (see the Gazette of India, 1884, Pt. I, p. 509) :
- (7) Pargana Dhalbhum in the District of Singbhum (see Gazette of India, 1881, Pt. I, p. 510) :
- (8) The Scheduled Portion of the Mirzapur District (see Gazette of India, 1879, Pt. I, p. 383) :
- (9) Jaunsar Bawar (see Gazette of India, 1879, Pt. I, p. 382) :
- (10) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Ghazi Khan (see Gazette of India, 1886, Pt. I, p. 48) :
- (11) The District of Lahaul (see Gazette of India, 1886, Pt. I, p. 301) :
- (12) The Scheduled Districts of the Central Provinces (see Gazette of India, 1879, Pt. I, p. 771) :
- (13) Coorg (see Gazette of India, 1878, Pt. I, p. 747) :
- (14) The District of Sylhet (see Gazette of India, 1879, Pt. I, p. 631).

The Act has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal (see Gazette of India, 1876, Pt. I, p. 606).

In ss. 2 to 19, certain formal words, which were repealed by the Repealing Act (XVI. of 1874) and the Repealing Act (XII. of 1876), have been omitted.

A curator appointed under this Act is not to exercise any authority lawfully belonging to a holder of a certificate under Act XXVII. of 1860 or VII. of 1889, or to an executor or administrator.—See the Succession Certificate Act (VII. of 1889), s. 23 (1).

It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

Person claiming right by succession to property of deceased may apply for relief against wrongful possession.

property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to

the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

2. It shall be lawful for any agent, relative, or near friend, or

Agent, &c., may apply in behalf of minor, &c.

for the Court of Wards in cases within their cognizance, in the event of any

minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.

3. The Judge to whom such application shall be made shall,

Enquiry made by Judge.

in the first place, enquire by the solemn declaration of the complainant, and by

witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bona fide*.

4. In case the Judge shall be satisfied of the existence of

Procedure.

such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by

publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned), and shall deliver possession accordingly: provided

Determination of right.

always that the Judge shall have the power to appoint an officer who shall

take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

Appointment of officer to secure effects.

power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.

5. In case it shall further appear upon such application and

Appointment of curator pending determination of suit.

examination as aforesaid, that danger is to be apprehended of the misappropriation or waste of the property before the

summary suit can be determined, and that the delay in obtaining security from the party in possession, or the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a curator, and also that every appointment of a curator in respect of any property be duly published.

6. The Judge shall have power to authorize such curator, Powers conferrable on either to take possession of the property curator. generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Discretion to allow party sion. Provided always that it shall be in possession to continue. entirely discretionary with the Judge whether he shall allow the party in possession to continue in such possession on giving security or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.

7. The Judge shall exact from the curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property, and on the annual profits of the real property. All surplus moneys realized by the curator shall be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Curator to give security, and may receive remuneration. Curator may be invested with powers before security is taken. Provided always that, although security shall be required from the curator with all reasonable despatch, and, where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the curator with the powers of his office.

8. Where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sadr Diwani Adalat, and the Court of Sadr Dawani Adalat, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.

9. The curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and all suits may be instituted or defended in the name of the curator on behalf of the estate. Provided that an express authority shall be requisite in the sanad of the curator's appointment for the collection of debts or rents; but such express authority shall enable the curator to give a full acquittance for any sums of money received by virtue thereof.

10. Pending the custody of the property by the curator, it shall be lawful for the Judge to make such allowances to parties having a *prima-facie* right thereto as, upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.

11. The curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and, upon giving up the possession of the property, file a detailed account of his administration to the satisfaction of the Judge.

12. The accounts of any such curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to inspect accounts, and right of interested party to keep duplicate.

to appoint a separate person to keep a duplicate account of all receipts and payments by such curator. And if it be found that the accounts of any such curator are in arrear, or if they shall be erroneous or incomplete, or if the curator shall not

Penalty for default as to accounts. produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.

**13.** After the Judge of any district shall have appointed

Bar to appointment of any curator, such appointment shall preclude the Judge of any other district second curator for same property. within the same Presidency from ap-

pointing any other curator, provided the first appointment be in respect of the whole of the property of the deceased. But, if

Curators of different parts the appointment be only in respect of of property. a portion of the property of the deceased,

this shall not preclude the appointment within the same Presidency of another curator in respect of the residue or any portion thereof; provided always that no Judge shall appoint a curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge; and provided, further, that, if two

Power to appoint sole curator. or more curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sadr Diwani Adalat to make such order as it shall think fit for the appointment of one curator of the whole property.

**14.** This Act shall not be put in force unless the aforesaid

Limitation of time for application for curator. application to the Judge be made within six months of the decease of the proprietor whose property is claimed by right in succession.

**15.** This Act shall not be put in force to contravene any

Bar to enforcement of Act against public settlement or legal directions by deceased. public act of settlement. Neither, in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his

decease in the event of minority or otherwise, in opposition to such directions; but in every such case, so soon as the Judge having jurisdiction over the property of a deceased person shall be satisfied of the existence of such directions, he shall give effect thereto.

**16.** This Act shall not be put in force for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor or other disqualified person whose property shall be subject to the Court of Wards shall be the party on whose behalf application is made under this Act, the Judge, if he determines to cite the party in possession, and also appoint a curator, shall invest the Court of Wards with the curatorship of the estate, pending the suit, without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suit, appear to be entitled to the property, possession shall be delivered to the Court of Wards.

**17.** Nothing in this Act contained shall be any impediment to the bringing of a regular suit, either by the party whose application may have been rejected before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.

**18.** The decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

**19.** It shall be lawful for the Governments of the respective Presidencies to appoint public curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public curator or curators in all cases where the choice of a curator is left discretionary with him under the preceding provisions of this Act.

**20.** [*Power to appoint ecclesiastical registrar to receive effects in certain cases.*] Repealed by Act VIII. of 1855, s. 13.

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# ACT VII. OF 1887 :

## The Suits' Valuation Act, 1887.\*

RECEIVED THE G.-G.'s ASSENT ON THE 11TH FEBRUARY 1887.

*An Act to prescribe the mode of valuing certain Suits for the purpose of determining the Jurisdiction of Courts with respect thereto.*

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto ; It is hereby enacted as follows :—

Title. 1. This Act may be called the Suits' Valuation Act, 1887.

### PART I.

#### SUITS RELATING TO LAND.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the Governor-General in Council, by notification in the *Gazette of India*, directs.†

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\* For Statement of Objects and Reasons, see *Gazette of India*, 1886, Pt. V., p. 791 ; for Report of the Select Committee see *ibid* 1887, Pt. IV., p. 18 ; and for Proceedings in Council, see *ibid*, 1886, Supplement, pp. 1131 and 1155, and *ibid*, 1887, Pt. VI., pp. 16 and 21.

Act VII of 1887 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See s. 4 and the First Schedule.

It had previously been extended there by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874).—See *Burma Gazette*, 1888, Pt. I., p. 362.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890).

† Part I. of the Act has, under s. 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March 1889.—See *Gazette of India*, 1889, Pt. I, p. 107.

3. (1) The Local Government may, with the previous sanc-

Power for Local Govern-  
ment to make rules determin-  
ing value of land for jurisdic-  
tional purposes.

tion of the Governor-General in Council,  
make rules for determining the value of  
land for purposes of jurisdiction in the  
suits mentioned in the Court Fees Act,

1870,\* section 7, paragraphs v. and vi., and paragraph x., clause (d).

(2) The rules may determine the value of any class of land,  
or of any interest in land, in the whole or any part of a local area,  
and may prescribe different values for different places within the  
same local area.

4. Where a suit mentioned in the Court Fees Act, 1870,\*

Valuation of relief in cer-  
tain suits relating to land not  
to exceed the value of the  
land.

section 7, paragraph iv., or Schedule II.,  
article 17, relates to land or an interest  
in land of which the value has been de-  
termined by rules under the last-forego-  
ing section, the amount at which, for purposes of jurisdiction, the  
relief sought in the suit is valued shall not exceed the value of the  
land and or interest as determined by those rules.

5. (1) The Local Government shall, before making rules

Making and enforcement  
of rules.

under section 3, consult the High Court  
with respect thereto.

(2) A rule under that section shall not take effect till the ex-  
piration of one month after the rule has been published in the lo-  
cal official Gazette.

6. On and from the date on which rules under section 3 take

Repeal of section 14 of the  
Madras Civil Courts Act,  
1873.†

effect in any part of the territories under  
the administration of the Governor of  
Fort St. George in Council to which the  
Madras Civil Courts Act, 1873,† extends, section 14 of that Act  
shall be repealed as regards that part of those territories.

## PART II.

### OTHER SUITS.

7. This Part extends to the whole of British India; and shall

Extent and commencement  
of Part II.

come into force on the first day of July,  
1887.

\* Act VII. of 1870.

† Act III. of 1873.

8. Where, in suits other than those referred to in the Court Fees Act, 1870,\* section 7, paragraphs v., vi., and ix., and paragraph x., clause (d), court-fees are payable *ad valorem* under the Court Fees Act, 1870,\* the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

9. When the subject-matter of suits of any class, other than suits mentioned in the Court Fees Act, 1870,\* section 7, paragraphs v. and vi., and paragraph x., clause (d), is such that, in the opinion of the High Court, it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court Fees Act, 1870,\* and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.†

10. [Repeal of s. 32, *Punjab Courts Act (XVIII. of 1884).*  
Repealed by the *Repealing and Amending Act (XII. of 1891).*

### PART III.

#### SUPPLEMENTAL PROVISIONS.

11. (1) Notwithstanding anything in section 578 of the Code of Civil Procedure,‡ an objection, that, by reason of the over-valuation or under-valuation of a suit or appeal, a Court of first instance or Lower Appellate Court, which had not jurisdiction with respect to the suit or appeal, exercised jurisdiction with respect thereto, shall not be entertained by an Appellate Court unless—

\* Act VII. of 1870.

† For rules as to valuation of certain classes of suits under this section in—

(1) the Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 246;

(2) Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 122.

‡ This reference to s. 578 of Act XIV. of 1882 should now be meant to apply to s. 99 of Act V. of 1908 (the new Code).—*See* s. 158 of the latter Act.

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the Lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section, and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of the first instance or Lower Appellate Court.

(3) If the objection was taken in that manner, and the Appellate Court is satisfied as to both those matters, and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeal; but, if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure\* or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

Proceedings pending at commencement of Part I. or Part II. **12.** Nothing in Part I. or Part II. shall be construed to affect the jurisdiction of any Court—

(a) with respect to any suit instituted before rules under Part I. applicable to the valuation of the suit take effect, or Part II. has come into force, as the case may be, or

(b) with respect to any appeal arising out of any such suit.

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\* This reference to s. 622 of Act XIV. of 1882 should now be meant to apply to s. 115 of the new Code (Act V. of 1908).—See s. 158 of the latter Act.

# ACT NO. IV. OF 1882.

## The Transfer of Property Act, 1882.

[As amended by Act V. of 1908.]

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THE SCHEDULE:

ENACTMENTS REPEALED.

# ACT NO. IV. OF 1882.\*

## The Transfer of Property Act, 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY  
1882.

*An act to amend the Law relating to the Transfer of Property by  
Act of Parties.*

WHEREAS it is expedient to define and amend certain parts  
of the law relating to the transfer of property by act of parties; It is hereby  
acted as follows:—

Preamble.

### CHAPTER I.

#### PRELIMINARY.

Short title.

1. This Act may be called the  
"Transfer of Property Act, 1882:"

Commencement.

It shall come into force on the first  
day of July 1882:

It extends, in the first instance, to the whole of British India  
except the territories respectively ad-  
ministered by the Governor of Bombay

Extent.

\* For Statement of Objects and Reasons, see *Gazette of India*, 1887, Pt. V., p. 171; for the Preliminary Report of the Select Committee, see *ibid.*, 1878, Pt. V., p. 48; for the further Report of the Select Committee, see *ibid.*, 1879, Pt. V., p. 106; for the Third Report of the Select Committee, see *ibid.*, 1881, Pt. V., p. 395; for Proceedings in Council, see *ibid.*, 1877, Supplement, p. 1568; *ibid.*, 1877, Supplement, p. 1690; *ibid.*, 1882, Supplement, p. 96; *ibid.*, 1882, Supplement, p. 169.

The Transfer of Property Act (IV. of 1882) does not apply to Crown Grants.—See the Crown Grants Act (XV. of 1895), printed at p. 78, *infra*.

Act IV. of 1882 has ceased to be in force in the Naga Hills District (including the Mokokchang Sub-division), the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills, and the Mikir Hills Tract.—See Assam Rules Manual, Ed. 1893, pp. 408, 409, 1884, Pt. II., pp. 212 and 705 respectively.

in Council, the Lieutenant-Governor of the Punjab, and the Chief Commissioner of British Burma.\*

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend† this Act "or any part thereof"‡ to the whole of any specified part of the territories under its administration.

"And any Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, exempt,§ either retrospectively or prospectively, any part of the territories administered by such Local Government from all or any of the following provisions, namely :—

"Section 54, paragraphs 2 and 3, 59, 107, and 123."||

Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107, and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1877,¶ under the power conferred by the first section of that Act or otherwise.\*\*

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\* This reference to British Burma should now be read as referring to Lower Burma.—See the Upper Burma Laws Act (XX. of 1886), s. 4, and now the Burma Laws Act (XIII. of 1898), by which, Act XX. of 1886 has been repealed. The Chief Commissioner is now Lieutenant Governor of Burma.—See Proclamation, dated 9th April 1897, in *Gazette of India*, 1897, Pt. I., p. 261.

† Act IV. of 1882 has, from the 1st January 1893, been extended to—

- (1) the whole of the territories (other than the Scheduled Districts) under the administration of the Government of Bombay (see *Bombay Government Gazette*, 1892, Pt. I., p. 1071); and
- (2) the area included within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon (see *Burma Gazette*, 1892, Pt. I., p. 373).

‡ The words quoted have been inserted by Act VI. of 1904.

§ No such exemption has yet been made.

|| The two clauses quoted have been substituted for the original clause by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 1. S. 54, paras. 2 and 3, and ss. 59, 107, and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of the Cantonments Act (XIII. of 1889) extend to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1).

¶ Act III. of 1877.

\*\* This clause has been added by Act III. of 1885, s. 2, and is to be deemed to have been added from the date on which Act IV. of 1882 came into force.

2. In the territories to which this Act extends for the time being, the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(a) the provisions of any enactment not hereby expressly repealed;

(b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(d) save as provided by section 57 and Chapter IV. of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction; and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

“immoveable property:”

“immoveable property” does not include standing timber, growing crops, or grass:

“instrument:”

“instrument” means a non-testamentary instrument:

“registered” means registered in British India under the law\* for the time being in force regulating the registration of documents:

“registered:”

“attached to the earth:”

“attached to the earth” means—

(a) rooted in the earth, as in the case of trees and shrubs:

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

\* See the Indian Registration Act (III. of 1877).

“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property, or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional, or contingent:”\*

and a person is said to have “notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872,† s. 229.

Enactments relating to contracts to be taken as part of Act IX. of 1872. 4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.†

‡ And sections 54, paragraphs 2 and 3, 59, 107, and 123 shall be read as supplemental to the Indian Registration Act, 1877.§

## CHAPTER II.||

### OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A).—*Transfer of Property, whether Moveable or Immoveable.*

5. In the following sections “transfer of property” means “Transfer of property” an act by which a living person conveys defined. property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and “to transfer property” is to perform such act.

\* This definition of “actionable claim” has been inserted by the Transfer of Property Act (II. of 1900), s. 2.

† Act IX. of 1872.

‡ This paragraph has been added by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 3.

§ See the Indian Registration Act (III. of 1877).

|| Nothing in Ch. II. is to be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law.—See s. 2, *supra*.

**6.** Property of any kind may be transferred except as otherwise provided by this Act, or by any other law for the time being in force.

What may be transferred.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(e) A mere right to sue\* cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) *for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872,*† or (3) to a person legally disqualified to be transferee.

(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee ‡

**7.** Every person competent to contract, and entitled to transfer. Persons competent to transfer. ferable property, or authorized to dispose of transferable property not his

\* In cl. (e), the words, "for compensation for a fraud or for harm illegally caused," repealed by the Transfer of Property Act (II. of 1900), s. 3 (i), have here been omitted.

† In cl. (h), the italicized words have been substituted for the words, "for an illegal purpose," by the Transfer of Property Act (II. of 1900), s. 3 (ii).

‡ cl. (i) has been added by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 4.

own, is competent to transfer such property, either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent, and in the manner, allowed and prescribed by any law for the time being in force.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Operation of transfer.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth ;

and where the property is machinery attached to the earth, the moveable parts thereof ;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith ;

and where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer ;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Oral transfer.

10. Where property is transferred subject to a condition or limitation, absolutely restraining the transferee or any person claiming under him from parting with, or disposing of, his interest in the property, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan, or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Condition restraining alienation.

**11.** Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

**12.** Where property is transferred subject to a condition or limitation, making any interest therein determinable on insolvency reserved or given to or for the benefit of any person to cease on his becoming insolvent, or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

**13.** Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.

#### *Illustration.*

A transfers property, of which he is the owner, to B, in trust for A and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

**14.** No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.



**15.** If, on a transfer of property, an interest therein is created for the benefit of a class of persons Transfer to class, some of whom come under sections 13 and 14. with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

**16.** Where an interest fails by reason of any of the rules contained in sections 13, 14, and 15, Transfer to take effect on failure of prior transfer. any interest created in the same transaction, and intended to take effect after or upon failure of such prior interest, also fails.

**17.** The restrictions in sections 14, 15, and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind. Transfer in perpetuity for benefit of public.

**18.** Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed. Direction for accumulation.

*Exception.*—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer the direction shall be valid in respect only of the income arising from the property within one year next following such date; and, at the end of the year, such property and income shall be disposed of respectively as if the period during which the accumulation had been directed to be made had elapsed.

**19.** Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith, on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

*Explanation.*—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment

ment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that, if a particular event shall happen, the interest shall pass to another person.

**20.** Where, on a transfer of property, an interest therein is

When unborn person acquires vested interest on transfer for his benefit. created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

**21.** Where, on a transfer of property, an interest therein is

Contingent interest. created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event; in the latter, when the happening of the event becomes impossible.

*Exception.*—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income, or so much thereof as may be necessary, to be applied for his benefit, such interest is not contingent.

**22.** Where, on a transfer of property, an interest there-

Transfer to members of a class who attain a particular age. in is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

**23.** Where, on a transfer of property, an interest therein is

Transfer contingent on happening of specified uncertain event. to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

**24. Where, on a transfer of property, an interest therein is**

Transfer to such of certain persons as survive at some period not specified. to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist unless a contrary intention appears from the terms of the transfer.

*Illustration.*

A transfers property to B for life, and after his death to C and D equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

**25. An interest created on a transfer of property, and dependent upon a condition, fails if the**

Conditional transfer. fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

*Illustrations.*

(a.) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b.) A gives Rs. 500 to B on condition that he shall marry A's daughter, C. At the date of the transfer, C was dead. The transfer is void.

(c.) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d.) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

**26. Where the terms of a transfer of property impose a**

Fulfilment of condition precedent. condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

*Illustrations.*

(a.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(b.) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D, and E. B marries without the consent of C, D, and E, but obtains their consent after the marriage. B has not fulfilled the condition.

**27.** Where, on a transfer of property, an interest therein is created in favour of one person, and, by the same transaction, an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

*Illustrations.*

(a.) A transfers Rs. 500 to B on condition that he shall execute a certain lease within 3 months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(b.) A transfers property to his wife; but, in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

**28.** On a transfer of property, an interest therein may be created to accrue to any person with the condition superadded that, in case a specified uncertain event shall happen, such interest shall pass to another person, or that, in case a specified uncertain event shall not happen, such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25, and 27.

**29.** An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

*Illustration.*

A transfers Rs. 500 to B to be paid to him on his attaining his majority or marrying, with a proviso that if B dies a minor, or marries without C's consent, the Rs. 500 shall go to D. B marries, when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

**30.** If the ulterior disposition is not valid, the prior disposition is not affected by it.

*Illustration.*

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

**31.** Subject to the provisions of section 12, on a transfer of property, an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

*Illustrations.*

(a.) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(b.) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

**32.** In order that a condition that an interest shall cease to

Such condition must not be invalid. exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

**33.** Where, on a transfer of property, an interest therein is

Transfer conditional on performance of act, no time being specified for performance. created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

**34.** Where an act is to be performed by a person either as a

Transfer conditional on performance of act, time being specified. condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by

the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall, as against him, be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But, if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition, rendered impossible or indefinitely postponed, the condition shall, as against him, be deemed to have been fulfilled.

### *Election.*

35. Where a person professes to transfer property which he has no right to transfer, and, as part of the same transaction, confers any benefit on the owner of the property, such owner must elect either to confirm such transfer, or to dissent from it; and, in the latter case, he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration, to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

### *Illustration.*

The farm of Sultanpur is the property of C, and worth Rs. 800. A by an instrument of gift, professes to transfer it to B, giving by the same instrument Rs. 1,000 to C, C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must pay out of the Rs. 1,000, pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who, in his one capacity, takes a benefit under the transaction, may, in another, dissent therefrom.

*Exception to the last-preceding four rules.*—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

#### *Illustration.*

A transfers to B an estate to which C is entitled, and, as part of the same transaction, gives C a coal-mine. C takes possession of the mine, and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not, within one year after the date of the transfer, signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

#### *Apportionment.*

**36.** In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends, and other periodical payments in the nature of income, shall, upon the transfer of the interest of the person

Apportionment of periodical payments on determination of interest of person entitled.

entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

**37.** When, in consequence of a transfer, property is divided and held in several shares, and thereupon Apportionment of benefit and held in several shares, and thereupon of obligation on severance. the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed, and that the severance does not substantially increase the burden of the obligation; but, if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government, by notification in the official Gazette, so directs.

#### *Illustrations.*

(a.) A sells to B, C, and D a house situate in a village, and leases to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money, and C and D one-quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C, and D.

(b.) In the same case, each house in the village being bound to provide 10 days' labour each year on a dyke to prevent inundation, E had agreed, as a term of his lease, to perform this work for A. B, C, and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all according to such directions as B, C, and D may join in giving.

#### *B.—Transfer of Immoveable Property.*

**38.** Where any person, authorized only under circumstances Transfer by person authorized only under certain circumstances to transfer. in their nature variable to dispose of immoveable property, transfers such property for consideration alleging the



existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

*Illustration.*

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary; and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

**39.** Where a third person has a right to receive maintenance,

Transfer where third person or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee if he has notice of such intention, or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

*Illustration.*

A, a Hindu, transfers Sultanpur to his sister-in-law B in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultanpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultanpur. She has no claim on the villages transferred to C.

**40.** Where, for the more beneficial enjoyment of his own

Burden of obligation imposing restriction on use of land. immovable property, a third person has, independently of any interest in the immovable property of another, or of any easement thereon, a right to restrain the enjoyment of the latter property, or to compel its enjoyment in a particular manner, or

where a third person is entitled to the benefit of an obligation arising out of contract, and annexed to the ownership of immovable property, or of obligation annexed to ownership, but not amounting to interest or easement. but not amounting to an interest therein or easement thereon.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

*Illustration.*

A contracts to sell Sultanpur to B. While the contract is still in force, he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

**41.** Where, with the consent, express or implied, of the persons

Transfer by ostensible owner. interested in immoveable property, a person is the ostensible owner of such property, and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

**42.** Where a person transfers any immoveable property re-

Transfer by person having authority to revoke former transfer. serving power to revoke the transfer and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

*Illustration.*

A lets a house to B, and reserves power to revoke the lease, if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

**43.** Where a person erroneously represents that he is author-

Transfer by unauthorized person who subsequently acquires interest in property transferred. ized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

*Illustration.*

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y, and Z, representing that A is authorized to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition; but, on B's dying, A, as heir, obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

**44. Where one of two or more co-owners of immoveable pro-**

**Transfer by one co-owner.** **erty, legally competent in that behalf,**

**transfers his share of such property or**  
any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part-enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part-enjoyment of the house.

**45. Where immoveable property is transferred for consider-**

**Joint transfer for consider-** **ation to two or more persons, and such**  
**ation.** **consideration is paid out of a fund be-**

**longing to them in common, they are, in the absence of a contract**  
to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

**46. Where immoveable property is transferred for considera-**

**Transfer for consideration** **tion by persons having distinct interests**  
**by persons having distinct** **therein, the transferors are, in the ab-**  
**interests.** **sence of a contract to the contrary, entitl-**

**ed to share in the consideration** **equally where their interests in the**  
property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

*Illustrations.*

(a.) A, owning a moiety, and B and C, each a quarter share, of mouza Sultanpur exchange an eighth share of that mouza for a quarter share of mouza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mouza.

(b.) A, being entitled to a life-interest in mouza Atrali, and B and C, to the reversion, sell the mouza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600; the reversion, Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money; B and C to receive Rs. 400.

**47.** Where several co-owners of immoveable property transfer

Transfer by co-owners of a share therein without specifying that share in common property. the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

*Illustration.*

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mouza Sultanpur, transfer a two-anna share in the mouza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer, one-anna share is taken from the share of A, and half-anna share from each of the shares of B and C.

**48.** Where a person purports to create by transfer at different

Priority of rights created times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later-created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

**49.** Where immoveable property is transferred for consideration,

Transferee's right under ation, and such property or any part thereof is, at the date of the transfer, insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

**50.** No person shall be chargeable with any rents or profits

Rent *bond fide* paid to of any immoveable property which he holder under defective title. has, in good faith, paid or delivered to

any person of whom he, in good faith, held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

*Illustration.*

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

**51.** When the transferee of immoveable property makes any improvements made by improvement on the property, believing *bona-fide* holders under defective titles. in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops, and to free ingress and egress to gather and carry them.

**52.** During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor-General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court, and on such terms as it may impose.

**53.** Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated, or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat, or delay any such person, and such transfer is made gratuitously, or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

### CHAPTER III.

#### OF SALES OF IMMOVEABLE PROPERTY.

**54.** "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

"Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.\*

Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.\*

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Contract for sale.

It does not, of itself, create any interest in, or charge on, such property.

**55.** In the absence of a contract to the contrary, the buyer Rights and liabilities of and the seller of immoveable property respectively are subject to the liabilities, buyer and seller.

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\* Paras 2 and 3 of s. 54 extend to every cantonment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1). These paragraphs shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act (III. of 1877) under the power conferred by the first section of that Act or otherwise.—See s. 1, *supra*.

and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :—

(1.) The seller is bound—

- (a) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover ;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power ;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto ;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place ;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents ;
- (f) to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits ;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2.) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same :

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered, or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

(3.) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power :

Provided that (a), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (b), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But, in case (a), the seller, and in case (b), the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents, and furnish such true copies thereof or extracts therefrom as he may require; and, in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4.) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) Where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money or any part thereof remaining unpaid, and for interest on such amount or part.

(5.) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest :

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such



person as he directs, provided that, where the property is sold free from incumbrances, the buyer may retain, out of the purchase-money, the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto ;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury, or decrease in value of the property not caused by the seller ;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6.) The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, with notice of the payment to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery, and for interest on such amount ; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph 1, clause (a), and paragraph 5, clause (a), is fraudulent.

**56.** Where two properties are subject to a common charge,

*Sale of one of two properties subject to a common charge.* and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary,

on condition that, on such payment being made, the sale shall become void, or

on condition that, on such payment being made, the buyer shall transfer the property to the seller,  
the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale.

(d) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property, and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest, and partly in payment of the mortgage-money, the transaction is called a usufructuary mortgage, and the mortgagee a usufructuary mortgagee.

(e) Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

59\* Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor, and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a "registered instrument"† signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karachi, "Rangoon, Moulmein, Bassein, and Akyab,"‡ by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

\* S. 59 extends to every contoment in British India.—See the Cantonments Act (XIII. of 1889), s. 32 (1). S. 59 shall not extend, or be extended, to any district or tract of country for the time being excluded from the operation of the Indian Registration Act under the power conferred by the first section of that Act, or otherwise.—See s. 1, *supra*.

† The words quoted have been substituted for the words "an instrument" by Act VI. of 1904, s. 3.

‡ These quoted words have been substituted for the original ones—"and Rangoon"—by s. 4 of Act VI. of 1904.

*Rights and Liabilities of Mortgagor.*

**60.** At any time after the principal money has become payable,

Right of mortgagor to re- the mortgagor has a right, on payment  
deem. or tender, at a proper time and place, of  
the mortgage-money, to require the mortgagee (a) to deliver the  
mortgage-deed, if any, to the mortgagor; (b) where the mortgagee is  
in possession of the mortgaged property, to deliver possession thereof  
to the mortgagor, and (c) at the cost of the mortgagor, either to re-  
transfer the mortgaged property to him, or to such third person as  
he may direct, or to execute and (where the mortgage has been  
effected by a registered instrument) to have registered an acknowledg-  
ment in writing that any right in derogation of his interest transferred  
to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been  
extinguished by act of the parties, or by order of a Court.

The right conferred by this section is called a right to redeem,  
and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any  
provision to the effect that, if the time fixed for payment of the  
principal money has been allowed to pass, or no such time has been  
fixed, the mortgagee shall be entitled to reasonable notice before  
payment or tender of such money.

Nothing in this section shall entitle a person interested in a  
share only of the mortgaged property to  
Redemption of portion of mortgaged property. redeem his own share only, on payment  
of a proportionate part of the amount remaining due on the mort-  
gage, except where a mortgagee, or, if there are more mortgagees  
than one, all such mortgagees, has or have acquired, in whole or  
in part, the share of a mortgagor.

**61.** A mortgagor seeking to redeem any one mortgage shall,

Right to redeem one of in the absence of a contract to the con-  
two properties separately trary, be entitled to do so without paying  
mortgaged. any money due under any separate mort-  
gage made by him, or by any person through whom he claims, on  
property other than that comprised in the mortgage which he seeks  
to redeem.

*Illustration.*

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A  
afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to  
any additional charge on Z. A may institute a suit for the redemption of  
the mortgage on Z alone.

Right of usufructuary mortgagor to recover possession.

**62.** In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

- (a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property—when such money is paid;
- (b) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money—when the term (if any) prescribed for the payment of the mortgage-money has expired, and the mortgagor pays or tenders to the mortgagee the principal money, or deposits it in Court as hereinafter provided.

**63.** Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled, as against the mortgagee, to such accession.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture, or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned, the profits, if any, arising from the accession, shall be credited to the mortgagor.

Where the mortgage is usufructuary, and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession, shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

**64.** Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

- (a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;
- (b) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;
- (c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;
- (d) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee, have been paid, performed, and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists, and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease or, if the lease be renewed, the renewed lease, perform the conditions contained therein, and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;
- (e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will, at the proper time, discharge the principal money due on such prior incumbrance.

Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of a usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to, and shall go with, the interest of the mortgagee as such, and may be enforced by every person in whom that interest is, for the whole or any part thereof, from time to time, vested.

**66.** A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto if the security is insufficient, or will be rendered insufficient by such act.

*Explanation.*—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one half, the amount for the time being due on the mortgage.

*Rights and Liabilities of Mortgagee.*

**67.** In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem his property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- (a) to authorize a simple mortgagee as such to institute a suit for foreclosure, or a usufructuary mortgagee, as such, to institute a suit for foreclosure or sale, or a mortgagee by conditional sale, as such, to institute a suit for sale; or
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or
- (d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue for mortgage-money.

**68.** The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only—

- (a) where the mortgagor binds himself to repay the same ;
- (b) where the mortgagee is deprived of the whole or part of his security by, or in consequence of, the wrongful act or default of the mortgagor ;
- (c) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him, within a reasonable time, another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

**69.** A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property or any part thereof, without the intervention of the Court, is valid in the following cases, "and in no others"\* (namely)—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan, or Buddhist, "or a member of any other race, sect, tribe, or class, from time to time specified in this behalf by the Local Government, with the previous sanction of the Governor-General in Council, in the local official Gazette ;"†
- (b) where the mortgagee is the Secretary of State for India in Council ;
- (c) where the mortgaged property or any part thereof is situate within the town of Calcutta, Madras, Bombay, Karachi, "Rangoon, Moulmein, Bassein, or Akyab."†

\* The words quoted above in s. 69, para. 1, and those in clause (a), have been inserted by the Transfer of Property Act (1882) Amendment Act (III. of 1885), s. 5.

† In clause (c) of s. 69, the words quoted have been substituted for the words, "or Rangoon," by Act VI. of 1904, s. 4.

But no such power shall be exercised u

(1) notice in writing requiring pay money has been served on the mortgagor, mortgagors, and default has been made in p money, or of part thereof, for three months

(2) some interest under the mortgag five hundred rupees, is in arrear, and un after becoming due.

When a sale has been made in prof power, the title of the purchaser shall not b ground that no case had arisen to author notice was not given, or that the power was or irregularly exercised; but any person authorized or improper or irregular exercise his remedy in damages against the person e

The money which is received by the the sale after discharge of prior incumbr the sale is not made subject, or after pa section 57, of a sum to meet any prior incu absence of a contract to the contrary, be h applied by him, first in payment of all costs properly incurred by him as incident to t sale; and, secondly, in discharge of the m and other money (if any) due under the mor of the money so received shall be paid to t mortgaged property, or authorized to give r of the sale thereof.

Nothing in the former part of this conferred before this Act comes into force.

The powers and provisions containe inclusive) of the Trustees' and Mortgagee shall be deemed to apply to English mort India the mortgaged property may be si mortgagor nor the mortgagee is a Hi Buddhist, "or a member of any other ra from time to time specified in this beh ment, with the previous sanction of th Council, in the local official Gazette."†

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\* Act XXVIII. of 1866.

† The words quoted above in the last para serted by the Transfer of Property Act (1882) 1885), s. 5.



- (a) Any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property;
- (b) any person having any interest in, or charge upon, the right to redeem the property;
- (c) any surety for the payment of the mortgage-debt or any part thereof;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92 to 94.—[*Repealed by Act V. of 1908.*]

95. Where one of several mortgagors redeems the mortgage of one of several mortgaged property, and obtains possession thereof, he has a charge on the share of the other co-mortgagors in the property for his proportion of expenses properly incurred in so redeeming and obtaining possession.

96, 97.—[*Repealed by Act V. of 1908.*]

### *Anomalous Mortgages.*

98. In the case of a mortgage, not being a simple mortgage, or a mortgage by conditional sale, usufructuary mortgage, or an English mortgage, or a combination of the first and second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as expressed in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99.—[*Repealed by Act V. of 1908.*]

*Deposit in Court.*

**83.** At any time after the principal money has become payable, and before a suit for redemption of money due on mortgage. the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law\* for the verification of complaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

**84.** When the mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender, or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, as the case may be.

Nothing in this section, or in section 83, shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

**85 to 90** — [*Repealed by Act V. of 1908.*]

*Redemption.*

**91.** Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—  
Who may sue for redemption.

\* See the Code of Civil Procedure (Act XIV. of 1882), ss 51 and 52.

- (a) Any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property;
- (b) any person having any interest in, or charge upon, the right to redeem the property;
- (c) any surety for the payment of the mortgage-debt or any part thereof;
- (d) the guardian of the property of a minor mortgagor on behalf of such minor;
- (e) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;
- (f) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;
- (g) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92 to 94.—[*Repealed by Act V. of 1908.*]

95. Where one of several mortgagors redeems the mortgaged property, and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

96, 97.—[*Repealed by Act V. of 1908.*]

### *Anomalous Mortgages.*

98. In the case of a mortgage, not being a simple mortgage, a mortgage by conditional sale, usufructuary mortgage, or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99.—[*Repealed by Act V. of 1908.*]



called the donor to another called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the lifetime of the donor, and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

**123.\*** For the purpose of making a gift of immoveable property, the transfer must be effected

Transfer how effected.

by a registered instrument signed by or

on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid, or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

**124.** A gift comprising both existing and future property is void as to the latter.

**125.** A gift of a thing to two or more donees, of whom one

Gift to several, of whom one does not accept. does not accept it, is void as to the interest which he would have taken had he accepted.

**126.** The donor and donee may agree that, on the happen-

When gift may be suspended or revoked. ing of any specified event which does not depend on the will of the donor, a

gift shall be suspended or revoked; but a gift, which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

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\* S. 123 extends to every cantonment in British India.—See the Cantonments Act (XIII. of 1889) s. 32 (1). S. 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act (III. of 1877) under the power conferred by the first section of that Act or otherwise.—See s. 1 *supra*.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

### *Illustrations.*

(a.) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b.) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

**127.** Where a gift is in the form of a single transfer to the same person of several things, of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them, and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract, and accepting property Onerous gift to disqualified person. But, if after becoming competent to contract, and being aware of the obligation, he retains the property given, he becomes so bound.

### *Illustrations.*

(a.) A has shares in X, a prosperous joint-stock company, and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b.) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not, by his refusal, forfeit the money.

**128.** Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

### *Universal donee.*

**129.** Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or Saving of donations *mortis causa* and Muhammadan Law. shall be deemed to affect any rule of Muhammadan Law, or, save as provided by section 123, any rule of Hindu or Buddhist Law.

## CHAPTER VIII.\*

### OF TRANSFERS OF ACTIONABLE CLAIMS.

**130.** (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly-authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :

Provided that every dealing with the debt or other actionable claim by the debtor or other person, from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer, or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto.

*Exception.*—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

#### *Illustrations.*

(i.) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

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\* Ch. VIII. has been substituted for the original chapter by the Transfer of Property Act (II. of 1900), s. 4.

(ii.) A effects a policy on his own life with an Insurance Company, and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy, and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130, and to the provisions of section 132.

**131.** Every notice of transfer of an actionable claim shall be in Notice to be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

**132.** The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

*Illustrations.*

(i.) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii.) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

**133.** Where the transferor of a debt warrants the solvency of the debtor, the transferee, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

**134.** Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor, or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

**135.** Every assignee, by endorsement or other writing, of a policy of marine insurance, or of a policy of insurance against fire, in whom the property in the subject insured shall be absolute Assignment of rights under marine or fire policy of insurance



lutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

**136.** No Judge, legal practitioner, or officer connected with any Court of Justice shall buy, or traffic in or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

**137.** Nothing in the foregoing sections of this chapter applies to stocks, shares, or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

*Explanation*—The expression, “mercantile document of title to goods,” includes a bill-of-lading, dock-warrant, warehouse-keeper’s certificate, railway-receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

## THE SCHEDULE.

### REPEAL OF ACTS.

(See section 2.)

(a.) STATUTES.

Year and Chapter.	Subject	Extent of repeal.
27 Hen. VIII, c. 10.	Uses ... ..	The whole.
13 Eliz., c. 5 ...	Fraudulent conveyances	The whole.
27 Eliz., c. 4 ...	Fraudulent conveyances.	The whole.
4 Wm. & Mary, c. 16	Clandestine mortgages.	The whole.

## THE SCHEDULE—(continued.)

## (b.) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX. of 1842	Lease and Re-lease	The whole.
XXXI. of 1854	Modes of convey- ing land.	Section 17.
XI. of 1855	Mesne-profits and improvements.	Section 1; in the Title, the words, "to mesne-profits, and," and in the Preamble, "to limit the liability for mesne-profits, and"
XXVII. of 1866	Indian Trustees Act.	Section 31.
IV. of 1872	Punjab Laws Act.	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XX. of 1875	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I. of 1798 and XVII. of 1806.
XVIII. of 1876	Oudh Laws Act.	So far as it relates to Bengal Regulation XVII. of 1806.
I. of 1877	Specific Relief Act	In sections 35 and 36, the words "in writing."

## (c.) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I. of 1798.	Conditional Sales.	The whole Regulation.
Bengal Regulation XVII. of 1806.	Redemption	The whole Regulation.
Bombay Regulation V. of 1827.	Acknowledgment of Debts : Interest : Mortgages in Possession.	Section 15

# ACT XV. OF 1895.

## The Crown Grants Act, 1895.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*Received the G.-G.'s Assent on the 10th October 1895.*

*An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.*

WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority, and it is expedient to remove such doubts ; It is hereby enacted as follows —

Title, extent, and commencement. 1. (1) This Act may be called the Crown Grants Act, 1895 ;

(2) it extends to the whole of British India ; and

(3) it shall come into force at once.

2. Nothing in the Transfer of Property Act, 1882, contained shall apply, or be deemed ever to have applied, to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made by or on behalf of Her Majesty the Queen-Empress, her heirs, or successors, or by or on behalf of the Secretary of State for India in Council, to, or in favour of, any person whomsoever ; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

3. All provisions, restrictions, conditions, and limitations ever contained in any such grant or transfer as Crown-grants to take effect according to their tenor. aforesaid shall be valid, and take effect according to their tenor, any rule of law, Statute, or enactment of the Legislature to the contrary notwithstanding.





# ACT VI. OF 1878.\*

The Indian Treasure-Trove Act, 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH FEBRUARY 1878.

An Act to amend the Law relating to Treasure-trove.

Preamble.

WHEREAS it is expedient to amend the law relating to treasure-trove; It is hereby enacted as follows:—

*Preliminary.*

1. This Act may be called "The Indian Treasure-trove Act, 1878;"

Short title.

It extends to the whole of British India;

Extent.

And it shall come into force at once.

Commencement.

2. [ *Repeal of enactments.* ] Repealed by the Repealing and Amending Act (XII. of 1891).

\* For the Statement of Objects and Reasons, see *Gazette of India*, 1877, Pt. V., p. 1463; for Discussions in Council, see *ibid*, Supplement, pp. 1288 and 1326; *ibid*, 1878, pp. 207 and 287.

Act VI. of 1878 has been declared in force in—

Angul and the Khondmals by the Angul District Regulation, 1894 (I. of 1894), s. 3;

the Santal Parganas by the Santal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santal Parganas Laws Regulation (III. of 1886), s. 3; . . .

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following portions of the de-regulationized Scheduled Districts of the Chutia Nagpur Division, namely:—

the districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum (see *Gazette of India*, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

2,000.—12-11-1912.

Act VI., 1878.—1.

Interpretation-clause.

### 3. In this Act—

“Treasure.”

“treasure” means anything of any value hidden in the soil, or in anything affixed thereto :

“Collector” means (1) any Revenue-officer in independent charge of a district, and (2) any officer

“Collector.”

appointed by the Local Government to

perform the functions of a Collector under this Act.\*

When any person is entitled, under any reservation in an instrument of transfer of any land or

Owner.

thing affixed thereto, to treasure in such

land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

### *Procedure on finding Treasure.*

4. Whenever any treasure, exceeding in amount or value

Notice by finder of treasure.

ten rupees, is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

(a) of the nature and amount or approximate value of such treasure ;

(b) of the place in which it was found ;

(c) of the date of the finding ;

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may, from time to time, require.

5. On receiving a notice under section 4, the Collector shall,

Notification requiring claimants to appear.

after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

(a) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf to the effect that, on a certain date (*mentioning it*), certain treasure (*mentioning its nature, amount and approximate value*)

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\* In Bombay, Mamlatdars have been appointed to perform the functions of Collectors under the Act.—See Bombay List of Local Rules and Orders, Vol., I., Ed. 1896, p. 163.

was found in a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(b) when the place in which the treasure appears to the Collector to have been found was, at the date of the finding, in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

6. Any person having any right to such treasure or any forfeiture of right on failure to appear.

not appearing as required by the notification issued under section 5, shall forfeit such right.

7. On the day notified under section 5 the Collector shall cause the treasure to be enquired into and determined by the Collector.

Matters to be enquired into and determined by the Collector.

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and,

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

8. If, upon an enquiry made under section 7, the Collector finds reason to believe that the treasure was hidden, within one hundred years before the date of the finding, by a person appearing as required by the said notification, and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

8. If, upon such enquiry, the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit instituted as aforesaid within such period to the knowledge of the Collector,

or



If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

**16.** The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire, on behalf of the Government, the treasure or any specified portion thereof, by payment, to the persons entitled thereto, of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

**17.** No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

**18.** A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure\* on a Civil Court for the trial of suits.

**19.** The Local Government may, from time to time, make rules,† consistent with this Act, to regulate proceedings hereunder.

\* See Act XIV. of 1882, s. 3.

† For rules made under the powers conferred by this section in—  
Bombay—see Bombay list of Local Rules and Orders, Vol. I., Ed. 1896, p. 163;

Burma—see Burma Laws List, Ed. 1897, p. 80;

Madras—see Madras List of Local Rules and orders, Vol. I., Ed. 1898, p. 111;

North Western Provinces and Oudh—see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 55;

Central Provinces—see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 23;

Assam—see Assam List of Local Rules and Orders, Ed. 1893, p. 107.

Such rules shall, on being published in the local Gazette, have the force of law.

### *Penalties.*

**20.** If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof, to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**21.** If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code,\* any offence under section 20, the share of such treasure, or the money in lieu thereof, to which he would otherwise be entitled, shall vest in Her Majesty,

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

## SCHEDULE.

[Repealed by the Repealing and Amending Act (XII. of 1891).]

\* Act XLV. of 1860.



# ACT XXVII. OF 1866.\*

The Indian Trustees Act, 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH OCTOBER 1866.

*in Act to consolidate and amend the Law relating to the Conveyance and Transfer of Property in British India revised in Mortgages and Trustees in cases to which English Law is applicable.*

WHEREAS it is expedient to consolidate and amend the laws relating to the conveyance and transfer of moveable and immoveable property vested in mortgagees and trustees in cases to which English law is applicable; It is hereby enacted as follows:—

## 1. [Repeal of Act.] Repealed by the Repealing Act (XIV. of 1870.

2. In this Act, unless there be something repugnant in the subject or context,—  
 "Immoveable property" shall extend to and include messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein;  
 "Stock" shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein. It shall also include shares in

\* The Statement of Objects and Reasons for the Bill which was passed to law as Act XXVII. of 1866 is not published. For discussions on the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494 and 531. It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts: The Districts of Hazaribagh, Lohardaga, and Manbhum, and argana Dhalbhum, and the Kolhan in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I., p. 504.

This Act is mainly founded on "the Trustee Act, 1850" (13 & 14 Vict., c. 60), and "the Trustee Act, 1852" (15 & 16 Vict., c. 55) *† Re Angelo*, 5 DeG. & S., 278.  
 2,000.—2-10-1912.  
 Act XXVII. 1866—1.

ships registered under the Merchant Shipping Act, 1854,\* or at any port in British India :

“Hold” and “holding” shall be applicable to any vested estate, whether for life or of a greater or less description, in possession, futurity, or expectancy in any immoveable property :

“Contingent right,” as applied to immoveable property, shall mean a contingent or executory interest, or possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained ; also a right of entry, whether immediate or future, and whether vested or contingent :

“Convey” and “conveyance,” applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another immoveable property which such person holds, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants-in-tail in accordance with the provisions of Act XXXI. of 1854 (*to simplify the modes of conveying land in cases to which the English law is applicable*) :

“Transfer” shall mean the execution and performance of every deed and act by which a person entitled to stock or Government securities can transfer such stock or Government securities from himself to another :

“High Court” shall mean every Court now or hereafter established under the Statute 24 & 25 Vict., cap. 104,† and also the Chief Court of the Punjab and the Chief Court of Lower Burma, or such one or more Judges of the said Courts respectively as shall be appointed by the Chief Justice or the senior Judge,‡ as the case may be, to entertain applications, and make orders, under this Act :

\* Stat. 17 & 18 Vict., c. 104.

† See “the Indian High Courts Act, 1861” (24 & 25 Vict., c. 104). Compare the definition. Compare also the definition of “High Court” in the General Clauses Act (X. of 1897), s. 3 (24), and also in s. 4 (j) of Act V. of 1898 (the new Code of Criminal Procedure).

‡ As to the Punjab, see “the Punjab Courts Act” (XVIII. of 1884), s. 5.

"Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person :

"Lunatic" shall mean any person who shall have been found by due course of law to be of unsound mind and incapable of managing his affairs :—  
 "Person of unsound mind," shall mean any person not a minor who, not having been found to be a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs :

In the case of a will made or an intestacy occurring before the first day of January 1866, \* "heir" shall mean the person claiming an interest in the immovable property of a deceased person under the laws concerning descent applicable to such property; and "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee, and the devisee of an heir, and generally any person claiming an interest in the immovable property of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent :

In the case of a will made or an intestacy occurring on or after the first day of January 1866, \* "heir" shall mean any person claiming an interest in the immovable property of a deceased person under the rules for the distribution of an intestate's estate; and "devisee" shall mean any person taking immovable property under a bequest, and any person, other than an executor or administrator, claiming an interest in immovable property, not as entitled thereto under the said rules, but by a title dependent solely upon the operation of the laws concerning intestate and testamentary succession :

"Mortgage" shall be applicable to every estate or interest in immovable or moveable property which would in the High Court be deemed merely a security for money :

\* The day on which "the Indian Succession Act" (X. of 1865) came into force.

“ Person.”

“ Person ’ shall include any company or association, or body of persons, whether incorporated or not :

Words importing the singular number only shall extend to several

Number : Gender.

persons or things; words importing the plural number shall apply to one person

or thing ; words importing the masculine gender shall extend to a female.

3. The powers and authorities given by this Act to the High

High Court to have jurisdiction in what cases.

Courts shall and may be exercised only in cases to which English law is applicable, and may be exercised with respect to pro-

perty within the local limits of the extraordinary original civil jurisdiction of the said Courts respectively.

4. When any lunatic or person of unsound mind shall hold any

High Court may convey estates of lunatic trustees and mortgagees;

immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order that

such property be vested in such person or persons in such manner and for such estate as the said Court shall direct ; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance of the property in the same manner for the same estate.

5. When any lunatic or person of unsound mind shall be entitled

and may convey contingent rights.

to any contingent right in any immoveable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said High Court shall direct ; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right.

6. When any lunatic or person of unsound mind shall be solely

High Court may transfer stock or Government securities of lunatic trustees and mortgagees.

entitled to any stock or Government securities, or to anything in action upon any trust or by way of mortgage, it shall be lawful for the High Court to make an

order vesting in any person or persons the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof ;

and when any person or persons shall be entitled jointly with such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said High Court may appoint.

7. When any stock or Government securities shall be standing in the name of any deceased person whose executor or administrator is a lunatic or person of unsound mind, or when anything in action shall be vested in any lunatic or person of unsound mind as the executor or administrator of a deceased person, it shall be lawful for the High Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest, or income thereof, or to sue for and recover such thing in action, or any interest in respect thereof in any person or persons the said Court may appoint.

8. Whenever any minor\* shall hold any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the minor trustee or mortgagee had attained his majority, and had duly executed a conveyance of the property in the same manner for the same estate.

9. Where any minor shall be entitled to any contingent right in any immovable property upon any trust or by way of mortgage, it shall be lawful for the High Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the minor had attained his majority, and had duly executed a deed so releasing or disposing of the contingent right.

\* For definition of minor, see "the Indian Majority Act" (IX. of 1875).



**10.** When any person solely holding any immoveable property

High Court may convey estate of trustee out of jurisdiction of Court.

upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order vesting such property in such person or persons, in such manner and for such estate as the said Court shall direct, and the order shall have the same effect as if the trustee had duly executed a conveyance of the property in the same manner and for the same estate.

**11.** When any person or persons shall hold any immoveable

High Court may make order where persons hold immoveable property in trust jointly with persons out of jurisdiction.

property in trust jointly with a person not within the jurisdiction of the High Court or who cannot be found, it shall be lawful for the said Court to make an order vesting the property in the person or persons so jointly holding, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance of the property in the same manner for the same estate.

**12.** When any person solely entitled to a contingent right in

Contingent rights of trustees.

any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such property from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

**13.** When any person jointly entitled with any other person or

High Court may make order where persons jointly entitled with others out of jurisdiction to contingent right in immoveable property.

persons to a contingent right in any immoveable property upon any trust shall be out of the jurisdiction of the High Court, or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons: and the order shall have the same effect as if the trustee out of the jurisdiction

tion, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right.

**14.** Where there shall have been two or more persons jointly holding any immovable property upon several trusts, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance of the property in the same manner for the same estate.

**15.** Where any one or more person or persons shall have held any immovable property upon any trust, and it shall be known to have held such property, whether last trustee living or dead, and it shall not be known, as to the vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance of the property in the same manner for the same estate.

**16.** When any person holding any immovable property upon any trust shall have died intestate as to such property without an heir, or shall have died, and it shall not be known who is his heir or devisee, it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the property in the same manner for the same estate.

**17.** When any immovable property is subject to a contingent right of unborn right in an unborn person or class of unborn persons, who, upon coming into existence, would, in respect thereof, hold such property upon any trust, it shall be lawful for the High Court to make an order which shall wholly release and discharge such property from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would, upon coming into existence, hold in such property.

**18.** In every case where any person holds or shall hold, jointly or solely, any immoveable property, or is or shall be entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person, requiring such trustee to convey the same, or to release such contingent right, it shall be lawful for the High Court, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey the said property for the space of twenty-eight days after such demand, to make an order vesting such property in such person or persons in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance of the property, or a release of such right, in the same manner and for the same estate.

**19.** When any person to whom any immoveable property has been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance or vesting of such property, then in any of the following cases it shall be lawful for the High Court to make an order vesting such property in such person or persons in such manner and for such estate as the said Court shall direct, that is to say,—

when an heir or devisee of such mortgagee shall be out of the jurisdiction of the High Court, or cannot be found;

when an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such property, or a duly-authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such property shall have been tendered to him by a person entitled as aforesaid, or a duly-authorized agent of such last-mentioned person;

when it shall be uncertain which of several devisees of such mortgagee was the survivor;

when it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead:

when such mortgagee shall have died intestate as to such property and without an heir, or shall have died, and it shall not be known who is his heir or devisee;

and the order of the said High Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee, or surviving devisee, as the case may be, had duly executed a conveyance of the property in the same manner and for the same estate.

**20.** In every case where the High Court shall, under the provisions of this Act, be enabled to make an order to appoint person or persons to convey in certain cases. order having the effect of a conveyance of any immovable property, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the High Court, should it be deemed more convenient, to make an order appointing a person to convey such property, or release or dispose of such contingent right;

and the conveyance, or release or disposition of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect, in conveying the property, or releasing or disposing of the contingent right, as an order of the High Court would, in the particular case, have had under the provisions of this Act.

In every case where the High Court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established, it shall also be lawful for the High Court, if it be deemed more convenient, to make an order directing the secretary or any officer of such company or society at once to transfer, or join in transferring, the stock to the person or persons to be named in the order;

and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

**21.** When any person or persons shall be jointly entitled with any person out of the jurisdiction of the High Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or Government securities or thing in action upon any trust, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends,

When trustees of stock or Government securities joined with trustees out of jurisdiction.

**24. When any stock or Government securities shall be standing**

When stock, &c., stand- in the sole name of a deceased person, and his executor or administrator shall be out of the jurisdiction of the High Court, or cannot be found, or it shall be uncertain whether such executor or administrator be living or dead, or such executor or administrator shall neglect or refuse to transfer such stock or Government securities, or receive the dividends, interest or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Court to make an order vesting the right to transfer such stock or Government securities, or to receive the dividends, interest or income thereof, in any person or persons whom the said Court may appoint.

**25. Where any order shall have been made under this Act**

Effect of order vesting legal right to transfer stock, &c. vesting the right to any stock or Government securities in any person or persons appointed by the High Court, such legal right shall vest accordingly; and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers-of-attorney, and to perform all acts relating to the transfer of such stock and Government securities into his or their own name or names or otherwise or relating to the receipt of the dividends, interest or income thereof, to the extent and in conformity with the terms of such order.

**All companies and associations whatever, and all persons shall be**

Obligation to comply with equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisitions of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made.

**After notice in writing of any such order of the High Court con-**

cerning any stock or Government securities shall have been given, it shall not be deemed to be a breach of any such order of the High Court con-

cerning any stock or Government securities shall have been given, it shall not be deemed to be a breach of any such order of the High Court con-

51. Upon any petition under this Act being presented to the High Court, it shall be lawful for the said Court to postpone making any order upon such petition, until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

52. Every order made or purporting to be made under this Act by the High Court shall be a complete indemnity to all persons whatsoever for any act done pursuant thereto; and it shall not be necessary for such persons to enquire concerning the propriety of such order, or whether the High Court has jurisdiction to make the same.

53. Any order made by the High Court under this Act shall have the same effect, and be executed in the same manner, as a decree.

54. This Act may be cited as "The Indian Trustee Act, 1866."

55. [*Application of Act to Straits Settlements.*] Repealed by the Repealing Act (XVI. of 1874).

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# ACT XXVIII. OF 1866.\*

## The Trustees' and Mortgagees' Powers Act, 1866.

RECEIVED THE G.-G.'S ASSENT ON THE 24TH OCTOBER  
1866.

*An Act to give to Trustees, Mortgagees, and others, in cases to which English Law is applicable, certain Powers now commonly inserted in Settlements, Mortgages, and Wills, and to amend the Law of Property, and relieve Trustees.*

WHEREAS it is expedient that, in cases to which English law is applicable, certain powers and provisions usually inserted in settlements, mortgages, wills, and other instruments, should be made incident

Preamble.

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\* The Statement of Objects and Reasons of the Bill which was passed into law as Act XXVIII. of 1866 has not been published; for Proceedings in Council relating to the Bill, see *Gazette of India*, 1866, Supplement, pp. 416, 417, 494, and 531.

Act XXVIII. of 1866 has been declared to be in force in the whole of British India except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled districts, namely:—

West Jalpaiguri, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District.—See *Gazette of India*, 1881, Pt. I., p. 74.

The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum.—See *Gazette of India*, 1881, Pt. I., p. 504.

The scheduled portion of the Mirzapur District.—See *Gazette of India*, 1879, Pt. I., p. 383.

Jaunsar Bawar.—See *Gazette of India*, 1879, Pt. I., p. 382.

The District of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan.—See *Gazette of India*, 1886, Pt. I., p. 48.

The District of Sylhet.—See *Gazette of India*, 1879, Pt. I., p. 631.

The rest of Assam (except the North Lushai Hills).—See *Gazette of India*, 1897, Pt. I., p. 299.

It has been declared, by notification under s. 3 (b) of the same Act, not to be in force in the Scheduled District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.

to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved; It is enacted as follows:—

1. In the construction of this Act, unless there be something repugnant in the subject or context,—  
Interpretation-clause.

“immoveable property” shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth:  
“Immoveable property.”

“mortgage” shall be taken to include every instrument by virtue whereof immoveable property is in any manner conveyed, pledged, or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt:  
“Mortgage.”

“mortgagor.” shall be taken to include every person by whom any such conveyance, pledge, or charge as aforesaid shall be made:  
“Mortgagor.”

“mortgagee” shall be taken to include every person to whom or in whose favour any such conveyance, pledge, or charge as aforesaid is made or transferred: and  
“Mortgagee.”

“High Court” means any Court established or to be established under Statute 24 & 25 Vict., cap 104, and includes the Chief Court of the Punjab and the Chief Court of Lower Burma. \* \* \* †  
“High Court.”

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It has been extended, by notification under s. 5 of the last-mentioned Act, to the Scheduled Districts of Kumaon and Garhwal.—*See Gazette of India*, 1876, Pt. I., p. 606.

This Act is based on “the Law of Property Amendment Act, 1859” (22 & 23 Vict., c. 35). and 23 & 24 Vict., c. 145. This Act has since been repealed by 44 & 45 Vict., c. 41, s. 71, and 45 & 46 Vict., c. 38, s. 64.

† Certain words referring to the Straits Settlements, repealed by the Repealing Act (XVI. of 1874) have here been omitted.



*Powers of Trustees for Sale, &c., and Trustees of Renewable Leaseholds.*

2.\*† In all cases where, by any will, deed, or other instrument of settlement, it is expressly declared

Trustees empowered to sell may sell in lots, and either that trustees or other person therein by public auction or private named or indicated shall have a power of sale, either generally or in any particular event, over any immoveable property named or referred to in, or from time to time subject to the uses or trusts of, such will, deed; or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property, either together or in lots, and either by public auction or private contract, and either at one time or at several times.

3.\*‡ It shall be lawful for the persons making any such

Sale may be made under special conditions, and trustees may buy in, &c. sale to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale as they shall think fit; and also to buy in the property or any part thereof at any sale by auction, and to rescind or vary any contract for sale, and to resell the property which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.

4.\*§ For the purpose of completing any such sale as

Trustees exercising power of sale, &c., empowered to convey. aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question in such manner as may be necessary.

\* Ss. 2 to 5 and 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—See s. 2 of that Act.

† Compare 23 & 24 Vict., c. 145, s. 1.

‡ Compare *ibid.*, s. 2.

§ See foot-note (†) on last preceding page.

|| Compare 23 & 24 Vict., c. 145 (which is now repealed the Conveyancing and Law of Property Act, 1882—Stat. 44 & 45 V. and Settled Land Act, 1882—Stat. 45 & 46 Vict., c. 38), s. 3.

5.\*† The money so received upon any such sale as aforesaid

Money arising from sale<sup>s</sup> shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale;

and, until the money to be received upon any sale as aforesaid

Until so laid out, money to shall be so disposed of, the same shall be invested in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid :

Provided that, if the will, deed, or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

### *Powers of Mortgagees.†*

6.§ Where any principal money is secured or charged by

Powers incident to mort- deed on any immoveable property, or gages. on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns, shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the deed, ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely :—

\* See foot-note (†) on page 2.

† Compare *ibid* s. 4.

‡ As to the application of ss. 6 to 19 to certain English mortgages, see the Transfer of Property Act (IV. of 1882), s. 69, as amended by Act III. of 1885, s. 5.

§ Compare 23 & 24 Vict., c. 145, s. 11.



and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.

**10.\*** The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to, and vest in, the purchaser the property sold, for all the estate and interest therein which the person who created the charge had power to dispose of:

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee-simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage.

**11.†** At any time after the power of sale hereby conferred shall have become exerciseable, the Owner of charge may call for title-deeds and conveyance of legal estate. person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, or surrendered to, and were then vested in, him for all the estate and interest which the person creating the charge had power to dispose of;

and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

**12.‡** Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing

\* Compare *ibid*, s. 15.

† Compare 23 & 24 Vict., c. 145, s. 16.

‡ Compare *ibid*, s. 17.

delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then any writing appoint any person he may think fit.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

13.\* Every receiver appointed as aforesaid shall be deemed

Receiver deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

14.† Every receiver appointed as aforesaid shall have power

Powers of receiver. to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver, by suit, distress or otherwise, in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

15.‡ Every receiver appointed as aforesaid may be removed

Receiver may be removed, by the like authority, or on the like and new receivers appointed. requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

16.§ Every receiver appointed as aforesaid shall be entitled

Receiver to receive commission not exceeding 5 per cent. to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.

\* Compare 23 & 24 Vict., c. 145, s. 18.

† Compare *ibid.*, s. 19.

‡ Compare *ibid.*, s. 20.

§ Compare *ibid.*, s. 21.

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispensable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done.

**21.\*** Where in any lease heretofore granted or to be here-  
 Restricted operation of after granted, there is or shall be a  
 power or condition of re-entry on assign-  
 ing or under-letting, or doing any other specified act without license,  
 and a license at any time after the passing of this Act shall be given  
 to one of several lessees or co-owners to assign or under-let his  
 share or interest, or to do any other act prohibited to be done with-  
 out license; or shall be given to any lessee or owner, or any one  
 of several lessees or owners, to assign or under-let part only of the  
 property, or to do any other such act as aforesaid in respect of part  
 only of such property, such license shall not operate to destroy or  
 extinguish the right of re-entry in case of any breach of the coven-  
 ant or condition by the co-lessee or co-lessees, or owner or owners,  
 of the other shares or interests in the property, or by the lessee or  
 owner of the rest of the property (as the case may be) over or in  
 respect of such shares or interests or remaining property, but such  
 right of re-entry shall remain in full force over or in respect of the  
 shares or interests or property not the subject of such license.

**22†.** Where the reversion upon a lease is severed, and the  
 Apportionment of conditions rent or other reservation is legally ap-  
 portioned, the assignee of each part of  
 the reversion shall, in respect of the apportioned rent or other re-  
 servation allotted or belonging to him, have and be entitled to the  
 benefit of all conditions or powers of re-entry for non-payment of  
 the original rent or other reservation, in like manner as if such con-  
 ditions or powers had been reserved to him as incident to his part  
 of the reversion in respect of the apportioned rent or other reserva-  
 tion allotted or belonging to him.

\* Compare 22 and 23 Vict., c. 35, s. 2.  
 † Compare 22 & 23 Vict., c. 35, s. 3.

the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other;

and any deed or deeds of mortgage so executed may reserve such rate of interest, and fix such period or periods of repayment, as the person or persons executing the same shall think proper.

**26.\*** The powers conferred by the last preceding section

Powers given by last section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

**27.†** If any testator who shall have created such a charge

Executors to have power as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on, and become vested in, the person or persons (if any) in whom the executorship shall for the time being be vested.

**28.‡** Purchasers or mortgagees shall not be bound to enquire

Purchasers, &c., not bound whether the powers conferred by sections 25, 26, and 27 of this Act, or any to enquire as to powers.

\* Compare 22 & 23 Vict., s. 35, s. 15.

† Compare *ibid*, s. 16.

‡ Compare *ibid*, s. 17.

*Rent-charges.*

23.\* The release from a rent-charge of part of the immoveable property charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice, nevertheless, to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.

*Powers.*

24.† A deed hereafter executed in the presence of, and attested by, two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity :

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument ;

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed ; and, to any such execution of a power, this provision shall not extend.

25.‡ Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immoveable property, or any specific portion thereof, with the payment of his debts, or with Legatee in trust may raise money by sale, notwithstanding want of express power in will.

\* Compare *ibid*, s. 10.

† Compare *ibid*, s. 12.

‡ Compare 22 & 23 Vict., c. 35, s. 14.



*Investment of Trust-funds.*

**32.\*†** Trustees having trust-money in their hands which it is their duty to invest at interest, shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust-funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature :

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

*Trustees and Executors.*

**33.\*‡** In all cases where any property is held by trustees, in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not ;

and such trustees shall accumulate all the residue of such come by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen :

\* Ss. 32 to 37 shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—*See s. 37 of that Act.*

† Compare 23 & 24 Vict., c. 145, s. 25.

‡ Compare *ibid.*, s. 26.

f them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

### *Inheritance.*

**29.\*** In cases of intestacies occurring before the first day of January 1866, where there shall be a total failure of heirs of the purchaser, or where any immoveable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.

† This section shall be read as part of Act No. XXX. of 1839† (*for the amendment of the law of inheritance*).

### *Assignment of Moveables and Terms for Years.*

**30.§** Any person shall have power to assign moveable property now by law assignable, terms for years of immoveable property, and estates by *elegit*, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

### *Purchasers.*

**31 ||** The *bona-fide* payment to, and the receipt of, any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.

\* Compare 22 & 23 Vict., c. 35, s. 19.

† Compare *ibid*, s. 20.

‡ Repealed, except as to descents before 1866 by Act VIII. of 1868.

§ Compare 22 & 23 Vict., c. 35, s. 21.

|| Compare *ibid*, s. 23, omitting the limiting clause, "unless the contrary shall be expressly declared by the instrument creating the trust or security."

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The *trustee*,\* executor, or administrator acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such *trustee*,\* executor, or administrator in the subject-matter of the said application :

Provided, nevertheless, that this Act shall not extend to indemnify any *trustee*,\* executor, or administrator, in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such *trustee*,\* executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction ; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

### *General Provisions.*

44.† For the purposes of this Act, a person shall be deemed  
 Tenants for life, &c., may execute powers, notwithstanding incumbrances. to be entitled to the possession, or to the receipt of the rents and income of immoveable or moveable property, although his estate may be charged or incumbered, either by himself, or by any former owner, or otherwise howsoever to any extent ; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

45.‡ The provisions contained in this Act shall, except as  
 Operation of Act. hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation, or under a will or codicil confirmed or re-

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\* In s. 43, the italicized words, wherever they occur, shall be repealed in the territories to which the Indian Trust Act (II. of 1882) for the time being extends or is extended.—See s. 2 of that Act.

† Compare 22 & 23 Vict., c. 35, s. 31.

‡ Compare 23 & 24 Vict., c. 145, s. 34.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

**42.\*** Where an executor or administrator shall have given

As to distribution of assets of testator or intestate after notice given by executor and administrator.

such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the

High Court in an administration-suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

**43.†** Any *trustee*,‡ executor, or administrator, shall be at

Trustee, executor, &c., may apply by petition to Judge of High Court for opinion, advice, &c., in management, &c., of trust-property.

liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice, or direction of such Judge on any question respecting the *management* or‡ administration of the *trust-property* or‡ the assets of any testator or intestate.

\* Compare 22. & 23 Vict., c. 35, s. 29.

† Compare 22 & 23 Vict., c. 35, s. 30.

‡ In s. 43, the italicized words, wherever they occur, shall be repealed in the territories to which the Indian Trusts Act (II. of 1882) for the time being extends or is extended.—See s. 2 of that Act.

# THE INDIAN TRUSTS ACT, 1882:

## ACT NO. II. OF 1882.

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54. Co-trustees may not lend to one of themselves.



# THE INDIAN TRUSTS ACT, 1882 :

## ACT NO. II. OF 1882.

(RECEIVED THE G.-G.'s ASSENT ON THE 13TH JANUARY 1882.)

*An Act to define and amend the Law relating to Private Trusts and Trustees.*

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :—

Preamble.

### CHAPTER I.

#### PRELIMINARY.

1. This Act may be called "The Indian Trusts Act, 1882 :"  
Short title : and it shall come into force on the first  
Commencement. day of March 1882.

It extends, in the first instance, to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam; and the Local Government may, from time to time, by notification in the official gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan Law as to *wagf*, or the mutual relations of the members of an undivided family as determined by any any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day.

Savings.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed in the territories to which this Act for the time being extends.

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### SCHEDULE:

ENACTMENTS REPEALED.

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or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section, the expression “law” includes, where the trust-property is immoveable, and situate in a foreign country, the law of such country.

#### *Illustrations.*

(a.) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes: The trust is void.

(b.) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and, out of the profits thereof, to support A's children: The trust is void.

(c.) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent: The trust for A is invalid as against his creditors.

### 5. No trust in relation to immoveable property is valid unless

Trust of immoveable pro- declared by a non-testamentary instru-  
perty. ment in writing signed by the author of  
the trust or the trustee and registered, or by the will of the author  
of the trust or of the trustee.

### No trust in relation to moveable property is valid unless de-

Trust of moveable pro- clared as aforesaid, or unless the owner-  
perty. ship of the property is transferred to the  
trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

### 6. Subject to the provisions of section 5, a trust is created

Creation of trust. when the author of the trust indicates  
with reasonable certainty by any words

or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will, or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

**3.** A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by, the owner, or declared and accepted by him, for the benefit of another, or of another and the owner :

Interpretation-clause—

"trusts : "

the person who reposes or declares the confidence is called the "author of the trust ;" the person who accepts the confidence is called the "trustee ;" the person for whose benefit the confidence is accepted is called the "beneficiary ;" the subject-matter of the trust is called "trust-property" or "trust-money ;" the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property ; and the instrument (if any) by which the trust is declared is called the "instrument of trust : "

"author of the trust : "

"trustee : "

"beneficiary : "

"trust-property : "

"beneficial interest : "

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust : "

"breach of trust : "

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force : a person is said to have "notice" of a fact, either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to, or obtained by, his agent under the circumstances mentioned in the

"registered : "

"notice. "

Expressions defined in Act IX. of 1872. Indian Contract Act, 1872, section 229 ; and all expressions used herein, and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

## CHAPTER II.

### OF THE CREATION OF TRUSTS.

**4.** A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law.

Lawful purpose.

or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section, the expression “law” includes, where the trust-property is immoveable, and situate in a foreign country, the law of such country.

*Illustrations.*

(a.) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes: The trust is void.

(b.) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and, out of the profits thereof, to support A's children: The trust is void.

(c.) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent: The trust for A is invalid as against his creditors.

**5.** No trust in relation to immoveable property is valid unless

Trust of immoveable property. declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless de-

Trust of moveable property. clared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

**6.** Subject to the provisions of section 5, a trust is created

Creation of trust. when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (unless the trust is declared by himself to be the trustee) is himself to be the trustee.

to pay only the debts of the author of the trust existing, and re-  
 -erable at the date of the instrument of trust, or, when such in-  
 -ument is a will, at the date of his death, and (b), in the case of  
 -bts not bearing interest, to make such payment without in-  
 -rest.

### *Illustrations.*

(a.) A, a trustee, is simply authorized to sell certain land by public  
 auction: He cannot sell the land by private contract.

(b.) A, a trustee of certain land for X, Y, and Z, is authorized to sell  
 the land to B for a specified sum. X, Y, and Z, being competent to con-  
 -tract, consent that A may sell the land to C for a less sum: A may sell the  
 land accordingly.

(c.) A, a trustee for B and her children, is directed by the author of  
 the trust to lend, on B's request, trust-property to B's husband, C, on the  
 security of his bond. C becomes insolvent, and B requests A to make the  
 loan: A may refuse to make it.

**12.** A trustee is bound to acquaint himself, as soon as pos-  
 -sible, with the nature and circumstances  
 of state of trust-property. of the trust-property, to obtain, where  
 necessary, a transfer of the trust-property to himself, and (subject  
 to the provisions of the instrument of trust) to get in trust-moneys  
 invested on insufficient or hazardous security.

### *Illustrations.*

(a.) The trust-property is a debt outstanding on personal security.  
 The instrument of trust gives the trustee no discretionary power to leave  
 the debt so outstanding: The trustee's duty is to recover the debt without  
 unnecessary delay.

(b.) The trust-property is money in the hands of one of two co-trustees.  
 No discretionary power is given by the instrument of trust: The other  
 co-trustee must not allow the former to retain the money for a longer  
 period than the circumstances of the case required.

**13.** A trustee is bound to maintain and defend all such suits,  
 and (subject to the provisions of the  
 Trust-property. instrument of trust) to take such other  
 steps as, regard being had to the nature and amount or value of  
 the trust-pr may be reasonably requisite for the preservation  
 of the trust and the assertion or protection of the title  
 thereto.

### *Illustration.*

The ti  
 the author c  
 of the

immovable property which has been given to  
 unregistered instrument: Subject to the pro-  
 -vision Act, 1877, the trustee's duty is to cause

14. The trustee must not, for himself or another, set up or  
 Trustee not to set up title aid any title to the trust-property adverse  
 adverse to beneficiary. to the interest of the beneficiary.

15. A trustee is bound to deal with the trust-property as  
 Care required from trustee. carefully as a man of ordinary prudence  
 would deal with such property if it were  
 his own; and, in the absence of a contract to the contrary, a trustee  
 so dealing is not responsible for the loss, destruction, or deterioration  
 of the trust-property.

*Illustrations.*

(a.) A, living in Calcutta, is a trustee for B living in Bombay. A  
 remits trust-funds to B by bills drawn by a person of undoubted credit in  
 favour of the trustee as such, and payable at Bombay. The bills are dis-  
 honoured: A is not bound to make good the loss.

(b.) A, a trustee of leasehold property, directs the tenant to pay the  
 rents on account of the trust to a banker, B, then in credit. The rents are  
 accordingly paid to B, and A leaves the money with B only till wanted.  
 Before the money is drawn out, B becomes insolvent: A, having had no  
 reason to believe that B was in insolvent circumstances, is not bound to  
 make good the loss.

(c.) A, a trustee of two debts for B, releases one, and compounds the  
 other, in good faith, and reasonably believing that it is for B's interest to  
 do so: A is not bound to make good any loss caused thereby to B.

(d.) A, a trustee, directed to sell the trust-property by auction, sells  
 the same, but does not advertise the sale, and otherwise fails in reasonable  
 diligence in inviting competition: A is bound to make good the loss caus-  
 ed thereby to the beneficiary.

(e.) A, a trustee for B, in execution of his trust, sells the trust-pro-  
 perty, but, from want of due diligence on his part, fails to receive part of  
 the purchase-money: A is bound to make good the loss thereby caused  
 to B.

(f.) A, a trustee for B of a policy of insurance, has funds in hand for  
 payment of the premiums. A neglects to pay the premiums, and the policy  
 is consequently forfeited: A is bound to make good the loss to B.

(g.) A bequeaths certain moneys to B and C as trustees, and authorizes  
 them to continue trust-moneys upon the personal security of a certain firm  
 in which A had himself invested them. A dies and a change takes place  
 in the firm: B and C must not permit the moneys to remain upon the  
 personal security of the new firm.

(h.) A, a trustee for B, allows the trust to be executed solely by his  
 co-trustee, C. C misapplies the trust-property: A is personally answerable  
 for the loss resulting to B.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c), and (d), to account for simple interest at the rate of six per cent. per annum unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money, and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

#### *Illustrations.*

(a.) A trustee improperly leaves trust-property outstanding, and it is consequently lost: He is liable to make good the property lost, but he is not liable to pay interest thereon.

(b.) A bequeaths a house to B in trust to sell it, and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated, and its market-price falls: B is answerable to C for the loss.

(c.) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary: The trustee is liable to pay interest thereon for the period of the delay.

(d.) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause a, b, c, or d. Instead of so doing, he retains the money in his hands: He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e.) The instrument of trust directs the trustee to invest trust-money either in any of such securities, or on mortgage of immoveable property. The trustee does neither: He is liable for the principal money and interest.

(f.) The instrument of trust directs the trustee to invest trust-money in any of such securities, and to accumulate the dividends thereon. The trustee disregards the direction: He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.



(g.) Trust-property is invested in one of the securities mentioned in section 20, clause *a*, *b*, or *c*. The trustee sells such security for some purpose not authorized by the terms of the instrument of trust: He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h.) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust: The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

**24.** A trustee, who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property, cannot set off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

**25.** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessors.

**26.** Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application;

(b) where he allows his co-trustee to receive trust-property, and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not, within a reasonable time, take proper steps to protect the beneficiary's interest.

A co-trustee, who joins in signing a receipt for trust-property, and proves that he has not received the same, is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

*Illustration.*

A bequeaths certain property to B and C, and directs them to sell it, and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B, and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost: C may be compelled to make good the amount.

**27.** Where co-trustees jointly commit a breach of trust, or

Several liability of co-trustees. where one of them, by his neglect, enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But, as between the trustees themselves, if one be less guilty

Contribution as between co-trustees. than another, and has had to refund the loss, the former may compel the latter or his legal representative, to the extent of the assets he had received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee, who has been guilty of fraud, to institute a suit to compel contribution.

**28.** When any beneficiary's interest becomes vested in

Non-liability of trustee another person, and the trustee, not paying without notice of the vesting, pays or transfer by beneficiary. delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

**29.** When the beneficiary's interest is forfeited or awarded

Liability of trustee where beneficiary's interest is forfeited to Government. by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

**30.** Subject to the provisions of the instrument of trust, and

Indemnity of trustees. of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds, and securities as they respectively actually receive, and shall not be answerable the one for the other of them,

nor for any banker, broker, or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses.

## CHAPTER IV.

### OF THE RIGHTS AND POWERS OF TRUSTEES.

**31.** A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to title-deed.

**32.** Every trustee may reimburse himself, or pay or discharge, out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realisation, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

Right to reimbursement of expenses.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover, from the beneficiary personally, on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has, by mistake, made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest.

Right to be recouped for erroneous over-payment.

If such interest fail, the trustee is entitled to recover, from the beneficiary personally, the amount of such over payment

**33.** A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach, and, where he is a beneficiary, the trustee has a charge on his interest for such amount.

Right to indemnity from gainer by breach of trust.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

**34.** Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice, or direction on any present questions respecting the management or administration of the trust-property, other than questions of detail, difficulty, or importance not proper, in the opinion of the Court, for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition, and acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his duties as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

**35.** When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

**36.** In addition to the powers expressly conferred by this Act, and by the instrument of trust, and subject to the restrictions (if any) contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realisation, protection, or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.\*

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

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\* In s. 36, the second paragraph, repealed by Act XII. of 1891, Sch. I., has been omitted.

**37.** Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

**38.** The trustee making any such sale may insert such reasonable stipulations either as to title or conditions. evidence of title or otherwise, in any condition of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof, at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust-property, or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

#### *Illustrations.*

(a.) A bequeaths property to B, directing him to sell it with all convenient speed, and pay the proceeds to C: This does not render an immediate sale imperative.

(b.) A bequeaths property to B, directing him to sell it at such time, and in such manner, as he shall think fit, and invest the proceeds for the benefit of C: This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

**39.** For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

**40.** A trustee may, at his discretion, call in any trust-property invested in any security, and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract, and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

**41.** Where any property is held by a trustee in trust for a

Power to apply property of minors, &c., for their maintenance, &c. minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards

his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen: Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage, or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement, or expenses.

Nothing in this section shall be deemed to affect the provision of any local law for the time being in force relating to the persons and property of minors.

**42.** Any trustees or trustee may give a receipt in writing for

Power to give receipts. any money, securities, or other moveable property payable, transferable, or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring, or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c. **43.** Two or more trustees acting together may, if and as they think fit,—

(a) accept any composition or any security for any debt, or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust; and,

(d) for any of those purposes, enter into, give, execute, and do such agreements, instruments of composition, or arrangement, releases, and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when, by the instrument of trust (if any), a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust (if any), and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

**44.** When an authority to deal with the trust-property is given

Power to several trustees to several trustees, and one of them dis-  
of whom one disclaims or claims or dies, the authority may be  
dies. exercised by the continuing trustees  
unless, from the terms of the instrument of trust, it is apparent that  
the authority is to be exercised by a number in excess of the  
number of the remaining trustees.

**45.** Where a decree has been made in a suit for the execu-

Suspension of trustee's tion of a trust, the trustee must not  
powers by decree. exercise any of his powers except in  
conformity with such decree, or with the sanction of the Court by  
which the decree has been made, or, where an appeal against the  
decree is pending, of the Appellate Court.

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## CHAPTER V.

### OF THE DISABILITIES OF TRUSTERS.

**46.** A trustee who has accepted the trust cannot afterwards

Trustee cannot renounce renounce it except (a) with the permis-  
after acceptance. sion of a principal Civil Court of original  
jurisdiction, or (b), if the beneficiary is competent to contract, with

his consent, or (c) by virtue of special power in the instrument of trust.

**47.** A trustee cannot delegate his office or any of his duties,

Trustee cannot delegate.

either to a co-trustee or to a stranger,

unless (a) the instrument of trust so pro-

vides, or (b) the delegation is in the regular course of business, or

(c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

*Explanation.*—The appointment of an attorney or proxy to do an act merely ministerial, and involving no independent discretion, is not a delegation within the meaning of this section.

*Illustrations.*

(a.) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies: C may bequeath the trust-property to D and E upon the trusts of A's will.

(b.) A is a trustee of certain property with power to sell the same: A may employ an auctioneer to effect the sale.

(c.) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents, and pay them to C: B may employ a proper person to collect these rents.

**48.** When there are more trustees than one, all must join in

Co-trustees cannot act the execution of the trust except where the instrument of trust otherwise provides.

**49.** Where a discretionary power conferred on a trustee is

Control of discretionary not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

**50.** In the absence of express direction to the contrary con-

Trustee may not charge contained in the instrument of trust, or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing his trust.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator, or person holding a certificate of administration.

**51.** A trustee may not use or deal with the trust-property for

Trustee may not use trust-property for his own profit. his own profit, or for any other purpose unconnected with the trust.



**52.** No trustee whose duty it is to sell trust-property, and no Trustee for sale or his agent may not buy. agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein on his own account, or as agent for a third person.

**53.** No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage, or lease is manifestly for the advantage of the beneficiary.

And no trustee, whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary, may buy it or any part thereof, or obtain a mortgage or lease of it or any part thereof, for himself.

**54.** A trustee or co-trustee, whose duty it is to invest trust-money on mortgage or personal security, Co-trustees may not lend to one of themselves. must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

## CHAPTER VI.

### OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

**55.** The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

**56.** The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

and, where there is only one beneficiary, and he is competent to contract, or where there are several beneficiaries, and they are competent to contract, and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

*Illustrations.*

(a.) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A, on attaining majority, may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b.) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority, and is otherwise competent to contract: B may claim the Rs. 10,000.

(c.) A transfers certain property to B, and directs him to sell or invest it for the benefit of C, who is competent to contract: C may elect to take the property in its original character.

**57.** The beneficiary has a right, as against the trustee and all

<p>Right to inspect and take copies of instrument of trust, accounts, &amp;c.</p>	<p>persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property, and the vouchers (if any) by which they are supported, and the cases submitted, and opinions taken, by the trustee for his guidance in the discharge of his duty.</p>
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**58.** The beneficiary, if competent to contract, may transfer

<p>Right to transfer beneficial interest.</p>	<p>his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:</p>
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Provided that, when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

**59.** Where no trustees are appointed, or all the trustees die,

<p>Right to sue for execution of trust.</p>	<p>disclaim, or are discharged, or where, for any other reason, the execution of a trust by the trustees is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.</p>
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**60.** The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons, and by a proper number of such persons.

*Explanation I.*—The following are not proper persons within the meaning of this section :—

A person domiciled abroad; an alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

*Explanation II.*—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

#### *Illustrations.*

(a.) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances or that he is incapacitated from acting as trustee: A may obtain a receiver of the trust-property.

(b.) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies: C is entitled to have the property conveyed to a trustee for him.

(c.) A conveys certain property to four trustees in trust for B. Three of the trustees die: B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d.) A conveys certain property to three trustees in trust for B. All the trustees disclaim: B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e.) A a trustee for B refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust: B may institute a suit to have A removed, and a new trustee appointed in his room.

**61.** The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

#### *Illustrations.*

(a.) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract: C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b.) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land: B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

**62.** Where a trustee has wrongfully bought trust-property, Wrongful purchase by the beneficiary has a right to have the trustee. property declared subject to the trust, or re-transferred by the trustee if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But, in such case, the beneficiary must repay the purchase-money paid by the trustee, with interest and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case, and of his rights as against the trustee.

**63.** Where trust-property comes into the hands of a third person inconsistently with the trust, the Following trust-property— person may require him to admit into the hands of third beneficiary may require him to admit persons; formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property, and the money or other property which he has been converted. received therefor can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

## CHAPTER VII.

## OF VACATING THE OFFICE OF TRUSTEE.

*Office how vacated.*

**70.** The office of a trustee is vacated by his death, or by his discharge from his office.

*Discharge of trustee.*

**71.** A trustee may be discharged from his office only as follows—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment, under this Act, of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

**72.** Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him unless a proper person can be found to take his place.

**73.** Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is, for a continuous period of six months, absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insipient, or desires to be discharged from the trust, or refuses, or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable, to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or,

(b) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees if they all retire simultaneously, or (with the like consent) the last-retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee, the number of trustees may be increased.

The Official Trustee may, with his consent, and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed, and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will, but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

**74.** Whenever any such vacancy or disqualification occurs, and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in, or to be inferred from, the instrument of trust; (b) to the wishes of the person (if any) empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d), where there are more beneficiaries than one, to the interests of all such beneficiaries.

**75.** Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely, or

jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities, and discretions, and shall, in all respects, act, as if he had been originally nominated a trustee by the author of the trust.

**76.** On the death or discharge of one of several co-trustees, the trust survives, and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

## CHAPTER VIII.

### OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

**77.** A trust is extinguished—

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked.

Revocation of trust.

**78.** A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent ;
- (b) where the trust has been declared by a non-testamentary instrument, or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or,
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

*Illustration.*

A conveys property to B in trust to sell the same, and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust; but, if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

**79.** No trust can be revoked by the author of the trust so as

Revocation not to defeat what trustees have duly done, to defeat or prejudice what the trustees may have duly done in execution of the trust.

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## CHAPTER IX.

### OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

**80.** An obligation in the nature of a trust is created in the following cases:—

**81.** Where the owner of property transfers or bequeaths it,

Where it does not appear that transferor intended to dispose of beneficial interest. and it cannot be inferred, consistently with the attendant circumstances, that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

*Illustrations.*

(a.) A conveys land to B without consideration, and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land: B holds the land for the benefit of A.

(b.) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z: B holds Z for the benefit of A.

(c.) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life: A and B hold the stock for the benefit of A during his life.

(d.) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.



82. Where property is transferred to one person for a con-

Transfer to one for consi- sideration paid or provided by another  
deration paid by another. person, and it appears that such other  
person did not intend to pay or provide such consideration for the  
benefit of the transferee, the transferee must hold the property for  
the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of  
Civil Procedure, section 317,\* or Act No. XI. of 1859 (*To improve  
the Law relating to Sales of Land for Arrears of Revenue in the  
Lower Provinces under the Bengal Presidency*), section 36.

83. Where a trust is incapable of being executed, or where

Trust incapable of execu- the trust is completely executed without  
tion, or executed without ex- exhausting the trust-property, the trustee,  
hausting trust-property. in the absence of a direction to the con-  
trary, must hold the trust-property, or so much thereof as is unex-  
hausted, for the benefit of the author of the trust or his legal repre-  
sentative.

#### *Illustrations.*

(a.) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is  
ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for C," and C renounces his interest under the trust;

In each of these cases, B holds the land for the benefit of A.

(b.) A transfers Rs. 10,000 in the four per cents. to B in trust to pay  
the interest annually accruing due to C for her life. A dies. Then C dies:  
B holds the fund for the benefit of A's legal representative.

(c.) A conveys land to B upon trust to sell it, and apply one moiety of  
the proceeds for certain charitable purposes, and the other for the mainte-  
nance of the worship of an idol. B sells the land, but the charitable pur-  
poses wholly fail, and the maintenance of the worship does not exhaust the  
second moiety of the proceeds: B holds the first moiety and the part un-  
applied of the second moiety for the benefit of A or his legal representa-  
tive.

(d.) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be  
conveyed for purposes which either wholly or partially fail to take effect:  
B holds for the benefit of A's legal representative the undisposed of interest  
in the money, or land if purchased.

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\* That is, s. 317 of Act XIV. of 1882 (the same as s. 66 of the present  
Code, Act V. of 1908).

**84.** Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

*Transfer for illegal purpose.*

**85.** Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or, during the testator's lifetime, the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

*Bequest for illegal purpose.*

Where property is bequeathed, and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

*Bequest of which revocation is prevented by coercion.*

**86.** Where property is transferred in pursuance of a contract which is liable to rescission, or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to re-payment by the latter of the consideration actually paid.

*Transfer pursuant to rescindable contract.*

**87.** Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

*Debtor becoming creditor's representative.*

**88.** Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

*Advantage gained by fiduciary.*

#### *Illustrations.*

(a.) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest: A must hold for the benefit of B the difference between the price and value.

(c.) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000: The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of Obligor's duties, liabilities, the preceding sections of this chapter and disabilities. must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a), where he rightfully cultivates the property, or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill, and loss of time in such cultivation or employment; and (b), where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy, or become lessee or mortgagee of, the property or any part thereof.

96. Nothing contained in this chapter shall impair the rights Saving of rights of *bond-fide* purchasers. of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

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## THE SCHEDULE:

## STATUTE:

Year and chapter.	Short title.	Extent of repeal.
29 Car. II., c. 3 ...	The Statute of Frauds.	Sections 7, 8, 9, 10, and 11.

## ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII. of 1866...	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36, and 37.  In sections 39* and 43, the word "trustee," wherever it occurs; and, in section 43, the words "management or" and "the trust-property or."
I. of 1877 ...	The Specific Relief Act, 1877.	In section 12, the first illustration.

\* In the Schedule, the figures '39' have been repealed by Act XII. of 1891, Sch. I.; but the two words between which the figures '39' stand are allowed to stand as they are.



# ACT XXVIII. OF 1855.

## The Usury Laws Repeal Act, 1855.\*

RECEIVED THE G.-G.'S ASSENT ON THE 19TH  
SEPTEMBER 1855.

*An Act for the repeal of the Usury Laws.*

Preamble. WHEREAS it is expedient to repeal  
the laws now in force relating to Usury;  
It is enacted as follows:—

1. [*Repeal of enactments.*] Repealed by the Repealing Act (XIV. of 1870).

2. In any suit in which interest is recoverable, the amount  
Rate of interest to be shall be adjudged or decreed by the  
decreed by Courts. Court at the rate (if any) agreed upon by  
the parties; and, if no rate shall have been agreed upon, at such  
rate as the Court shall deem reasonable.

3. Whenever a Court shall direct that a judgment or decree  
Rate of interest upon a shall bear interest, or shall award interest  
judgment or decree. upon a judgment or decree, it may order  
the interest to be calculated at the rate allowed in the judgment or  
decree upon the principal sum adjudged, or at such other rate as  
the Court shall think fit.

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\* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

This Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following scheduled Districts, namely:—

(1) Sindh.—See *Gazette of India*, 1880, Pt. I., p. 672.

(2) West Jalpaiguri, the Western Dvars, the Western Hills of Darjiling, the Darjiling Tarai, and the Damson Sub-division of the Darjiling District.—See *Gazette of India*, 1881, Pt. I., p. 74.

(3) The District of Hizaribagh.—See *Gazette of India*, 1881, Pt. I., p. 507.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

5. Whenever, under the Regulations of the Bengal Code,\* a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated, and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

Proviso.

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- (4) The District of Lohardaga.—See *Gazette of India*, 1881, Pt. I., p. 508.
  - (5) The District of Manbhum.—See *Gazette of India*, 1881, Pt. I., p. 509.
  - (6) Pargana Dhalbhum in the District of Singbhum.—See *Gazette of India*, 1881, Pt. I., p. 510.
  - (7) The Scheduled portion of the Mirzapur District.—See *Gazette of India*, 1879, Pt. I., p. 383.
  - (8) Jaunsar Bawar.—See *Gazette of India*, 1879, Pt. I., p. 382.
  - (9) The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan.—See *Gazette of India*, 1886 Pt. I., p. 48.
  - (10) The District of Lahaul.—See *Gazette of India*, 1886, Pt. I., p. 301.
  - (11) The Scheduled Districts of the Central Provinces.—See *Gazette of India*, 1879, Pt. I., p. 771.
  - (12) The District of Sylhet.—See *Gazette of India*, 1879, Pt. I., p. 631.
  - (13) The Districts of Kamrup, Naugong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Davars) and Cachar (excluding the North Cachar Hills).—See *Gazette of India*, 1878, Pt. I., p. 533.

It has been extended, under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

- (1) Kumaon and Garhwal.—See *Gazette of India*, 1876, Pt. I., p. 606.
- (2) The North-Western Provinces Tarai.—See *Gazette of India*, 1876, Pt. I., p. 505.

\* See Ben. Reg. I. of 1798, s. 2. This Regulation is, however, now in force only in the Santhal Parganas and possibly in the Chota Nagpur Division; and, with the exception of the parts which relates to interest, the Regulation is also in force in the Punjab.—See the Punjab Code, Ed. 1888.

6. In any case in which an adjustment of accounts may be-

Rate of interest on future come necessary between the lender and  
adjustments of accounts. the borrower of money upon any mort-  
gage, conditional sale of landed property, or other contract what-  
soever, which may be entered into after the passing of this Act,  
interest shall be calculated at the rate stipulated therein; or, if no  
rate of interest shall have been stipulated, and interest be payable  
under the terms of the contract, at such rate as the Court shall deem  
reasonable.

7. [*Saving of prior transactions.*] *Repealed by the Repealing Act (XIV. of 1870).*

8. [*Commencement of Act.*] *Repealed by the Repealing Act (XIV. of 1870).*

#### SCHEDULE OF REPEALED ENACTMENTS.

[*Repealed by the Repealing Act*] (XIV. of 1870).

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1. When any claim shall be preferred to any waste-land proposed to be sold, or otherwise dealt with, on account of Government, or when any objection shall be taken to the sale or other disposition of such lands, the Collector of the district in which such land is situate, or other officer performing the duties of a Collector of land-revenue in such district, by whatever name his office is designated, shall, if the claim or objection be preferred within the period mentioned in the advertisement to be issued for the sale or other disposition of such land, which period shall not be less than three months, proceed to make an enquiry into the claim or objection.

2. The Collector or other officer as aforesaid shall call upon the claimant or objector to produce any evidence or documents upon which he may rely in proof of his claim or objection; and, after considering the same, and making any further enquiry that may appear proper, shall dispose of the case by an order for the admission or rejection of the claim or objection; and, if the land is proposed to be sold, for the sale of the same subject to any condition or reservation which, to such Collector or other officer as aforesaid, shall appear to be proper.

If the land is ordered to be sold subject to any condition or reservation, such condition or reservation shall be notified to intending purchasers at the time of sale.

3. Pending an enquiry into any claim or objection under the last preceding section, the Collector or other officer as aforesaid shall postpone the sale or other disposition of the land;

and, if he shall order that such claim or objection be rejected, and to allow claimant to contest rejection of claim, he shall further postpone the sale or other disposition of the land to allow the claimant or objector to contest the order of rejection in the manner hereinafter provided.

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It has been extended, by notification under s. 5 of the same Act, to the following Scheduled Districts:—

- (1) The Western Dvars (see *Gazette of India*, 1875, Pt. I., p. 497):
- (2) The North-Western Provinces Tarai (see *Gazette of India*, 1876, Pt. I., p. 505):

4. If the Collector or other officer as aforesaid shall consider the claim or objection to be established, and that the sale or other disposition of the land should not take place, he shall stop the sale or other disposition of the land ;

Sale to be stopped if claim appear to be established, but may afterwards be proceeded with.

but such sale or other disposition of the land may afterwards be proceeded with, if, on an order issued by the Local Government to try the claim or objection, as provided in section 6 of this Act, the claimant or objector shall fail to establish the same.

5. If the Collector or other officer as aforesaid shall order that the claim or objection be rejected, or that the land be sold subject to any condition or reservation, or that it be otherwise dealt with, he shall cause a copy of such order to be delivered to the claimant or objector ;

Delivery to claimant of copy of order of rejection or of sale.

and, if such claimant or objector shall not, within one week from the delivery of such copy, or within such further time as the Collector or other officer as aforesaid, for any special reason to be recorded, shall see fit to grant, give notice in writing to such Collector or other officer as aforesaid that he intends to contest such order, the order shall be final.

Order when final.

If the claimant or objector shall, within the time allowed, give such notice, the Collector or other officer as aforesaid shall immediately make a report to the Board of Revenue or other superior revenue authority, and shall forward with such report a copy of his order, stating fully all the circumstances of the case, and the evidence adduced in support or otherwise of the claim or objection ;

Report to Board.

and such Board or other authority, on the receipt of such report, and after calling for any further information which it may consider necessary, may confirm, modify, or reverse the order of the Collector or other officer as aforesaid.

Decision of Board.

If the Board or other authority as aforesaid confirm the order of the Collector or other officer as aforesaid, or modify such order in such manner as to leave any part of such order in force adverse to the claimant or objector, the Collector or other officer as aforesaid shall certify such order to the Court constituted as hereinafter provided ;

Certification to Court.

Notice to claimant.

and such Court shall forthwith give notice to the claimant or objector;

and if such claimant or objector shall not . . . \* institute

Decision when final.

a suit in such Court to establish his claim or objection, the order of the

Board or other authority aforesaid shall be final.

6. The Local Government may, within twelve months after the date on which the claim of any claimant of waste-land, or the objection of any objector as aforesaid, shall have been admitted under this Act by the Collector or other officer as aforesaid, direct a suit to be brought to try the claim or objection of the claimant or objector in a Court constituted as hereinafter provided.

7. For the investigation and trial of claims under this Act the Local Government shall constitute, in every district in which there may be any waste-lands capable of being sold or otherwise dealt with on account of Government, a Court consisting of an uneven number of persons, not less than three, of whom the Judge of the district or the officer presiding in the principal Civil Court of original jurisdiction in the district, by whatever name his office may be designated, shall be one.

Any one or more of the members of which such Court shall consist shall have power to make such orders in the case as may be necessary prior to the hearing of the suit:

Provided that, whenever the Collector, or other officer by whom the original enquiry was held, is the officer presiding in the principal Civil Court of original jurisdiction in the district, such officer shall not be a member of such Court.

8. Whenever any Court is constituted under this Act, notice thereof shall be given by written proclamation, copies of which shall be affixed in the several Courts, and in the offices of the several Collectors and Magistrates of the district:

\* In s. 5 the words, "within thirty days from the delivery of such notice from the Court" have here been repealed by the Indian Limitation Act (IX. of 1871). For limitation, see now the Indian Limitation Act (XV. of 1877), Sch. II., No. 1.

and from the date of the issue of such proclamation no other Claims not cognizable in Court shall be competent to entertain other Courts. any claim or objection belonging to the class of claims or objections for the trial and determination of which such Court is constituted

9. The Courts constituted under this Act shall be held at Special Courts where held. such place or places within the limits of their respective jurisdictions as shall be considered most convenient.

10. In every suit instituted under section 5 of this Act, the Plaintiff and defendant in claimant of the waste-land, or objector suit under section 5. to the sale or other disposition of such land, shall appear as plaintiff; and the Collector or other officer as aforesaid shall appear as defendant on the part of Government.

Appearance. Either party may appear by pleader or by agent:

Provided that, if such other officer as aforesaid be the presiding officer of the principal Civil Court of original jurisdiction in the district, the Local Government shall appoint some other officer to appear as defendant in the case on its behalf.

In any suit ordered to be instituted by the Local Government Plaintiff and defendant in under section 6 of this Act, the Government, by any officer to be appointed for the purpose, shall appear as plaintiff; and the claimant or objector as aforesaid shall appear as defendant.

11. In every suit instituted under this Act, except as herein- Regulation of proceedings. after provided, the proceedings shall be regulated, so far as they can be, by the Code of Civil Procedure.\*

12. The Court shall fix a day for the appearance of the parties, and for the hearing of the suit, of which due notice shall be given to the parties or their agent; and on the day so fixed the parties or their agents shall bring their witnesses into Court, together with any documents on which they may intend to rely in support of their respective statements.

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\* See Act XIV. of 1882, s. 3.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpoena requiring such witness to attend the Court on that day.

It shall be competent to the Court to require the personal attendance of the claimant of the waste-land or objector as aforesaid on the day fixed for the hearing, or at any subsequent stage of the suit.

**13.** On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste-land, or the objector or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

**14.** No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

**15.** If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, &c., to High Court, &c. law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate:

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

**16.** The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid.

and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred ;

but on final order for the sale or other disposition of the land in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court, or highest Civil Court of appeal.

**17.** The record of cases disposed of by Courts constituted under this Act shall be deposited amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

**18.** No claim to any land, or to compensation or damages in respect of any land, sold or otherwise dealt with on account of Government as waste-land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the lands so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.

If either party require the assistance of the Court to procure the attendance of a witness on such day, he shall apply to the Court in sufficient time before the day fixed for the hearing of the suit; and the Court shall issue a subpoena requiring such witness to attend the Court on that day.

It shall be competent to the Court to require the personal attendance of the claimant of the waste-land or objector as aforesaid on the day fixed for the hearing, or at any subsequent stage of the suit.

**13.** On the day fixed for the hearing of the suit, or as soon after as may be practicable, the Court shall proceed to examine the claimant of the waste-land, or the objector or his agent (when his personal attendance is not required), and the witnesses of the parties;

and upon such examination, and after inspecting the documents of the parties, and making any further enquiry that may appear necessary, shall proceed to pass such order in the case as it may consider just and proper.

**14.** No appeal shall lie from any decision or order passed under this Act, nor shall any such decision or order be open to revision.

**15.** If, on the trial of any suit under this Act, any question of law, or of usage having the force of law, or the construction of a document affecting the merits of the case, shall arise, on which the Court shall entertain reasonable doubts, the Court may, either of its own motion, or on the application of any of the parties to the suit, draw up a statement of the case, and submit it, with its own opinion, for the opinion of the High Court of Judicature, or of the highest Civil Court of appeal and revision in the territory in which the land is situate:

Provided that it shall be the duty of every Court held under this Act to make such reference to such High Court, or Court of appeal, if, in any suit under this Act, any question shall arise involving any principle of general importance, or the rights of a class.

**16.** The Court may proceed in the case notwithstanding a reference to the High Court, or other highest Civil Court of appeal as aforesaid.

and may pass an order contingent upon the opinion of the High Court, or other Court as aforesaid, on the point referred ;

but on final order for the sale or other disposition of the land but not make final order. in question in the suit, or for the admission or rejection of any claim or objection which shall be before the Court in such suit, shall be passed until the receipt of the order of the said High Court, or highest Civil Court of appeal.

**17.** The record of cases disposed of by Courts constituted Records of cases where to under this Act shall be deposited be deposited. amongst the records of the principal Civil Court of original jurisdiction in the district in which the property in dispute is situate.

**18.** No claim to any land, or to compensation or damages in Limitation as to claims to respect of any land, sold or otherwise land sold or dealt with. dealt with on account of Government as waste-land, shall be received after the expiration of three years from the date on which such land shall have been delivered by the Government to the purchaser, or otherwise dealt with.

If within three years after any lands have been delivered by the Government to the purchaser, or otherwise dealt with, any claimant or objector shall prefer a claim to the lands so delivered or otherwise dealt with, or an objection to such sale, or to compensation or damages in respect thereof, in the Court constituted under this Act for the district in which the land is situate, and shall show good and sufficient reason for not having preferred his claim or objection to the Collector or other officer as aforesaid within the period limited under section 1 of this Act, such Court shall file the claim or objection, making the claimant or objector plaintiff, and the Collector of the district or other officer aforesaid (with the like provision as aforesaid if such other officer be the presiding officer of the principal Civil Court of original jurisdiction in the district) the defendant in the suit ;

and the foregoing provisions of this Act shall be applicable to the trial and determination of the suit.

The report of the officer employed to give delivery, or to take possession, on the part of Government, of the land sold or otherwise dealt with, shall be conclusive evidence as to the date on which such delivery was made, or possession was taken.



**19.** In any case in which the land has been sold, if the Court shall be of opinion that the claim of the claimant is established, the Court shall not award the claimant possession of the land in dispute; but shall order him to receive from the Government treasury, by way of compensation, a sum equal to the price at which the land was sold, in addition to the costs of suit.

**20.** If the land shall have been sold subject to any condition or reservation, or shall not have been sold, but shall have been otherwise dealt with on account of the Government, and the Court shall be of opinion that the claim to such land, or the objection of an objector, is established, the Court shall award the claimant or objector to receive such sum in respect of his interest in such land as shall be awarded in that behalf under the provisions of Act VI. of 1857 (*for the acquisition of land for public purposes*),\*

and thereupon the Local Government shall proceed under the said Act to obtain an award of the value of such interest.

**21.** An award under any of the provisions of the two last preceding sections shall be in full satisfaction of the claim of the claimant or objector, and shall bar any future claim on his part, in respect to the land in suit, resting on the same cause of action, or on a cause of action which existed prior to the date of the sale or other disposition of the land on account of Government.

**22.** Nothing in this Act shall be held to prevent the Local Government from awarding to any claimant of waste-land sold on account of Government, on proof to the satisfaction of the Local Government of the claim of such claimant (*notwithstanding that he may not have preferred his claim either to the Collector or other officer as aforesaid, or to the proper Court constituted under this Act, within the period prescribed by this Act*), such amount as compensation for the said land, within the limit as to amount mentioned in section 19 of this Act, if the land have been sold not

\* See now the Land Acquisition Act (I. of 1894).

subject to any condition or reservation, as to such Local Government may seem proper.

**23.** If the land have been sold subject to any condition or reservation, or have been otherwise disposed of, on account of Government, and any claim to such land, or objection to the sale or other disposition of the land, shall be proved to the satisfaction of the Local Government, although not preferred to the Collector or other officer as aforesaid, or to the Court constituted under this Act within the period prescribed by this Act, the Local Government may award to such claimant or objector such amount as to such Local Government may appear to be the value of the interest of such claimant or objector in such land.

**24.** Unless the contrary appears from the context, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing the masculine gender shall include females.

Interpretation clause.  
Number.  
Gender.

reporting the singular number shall include the plural number, and words importing the plural number shall include the





*the construction and use of works on land so taken*),\* may, by special contract, signed by the owner of such property so delivered as last aforesaid, or by some person duly authorized in that behalf by such owner, limit his liability in respect of the same.

§ 7.† The liability of the owner of any railroad or tramroad constructed under the provisions of the said Act XXII. of 1863,‡ for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the schedule to this Act, shall not be deemed to be limited or affected by any special contract ;

but the owner of such railroad or tramroad shall be liable

When such owner answer- for the loss of or damage to property  
able for loss or damage. delivered to him to be carried only  
when such loss or damage shall have been caused by negligence  
or a criminal act on his part or on that of his agents or servants.

8. Notwithstanding anything hereinbefore contained, every

Common carrier liable for common carrier shall be liable to the  
loss or damage caused by owner for loss of or damage to any  
neglect or fraud. property delivered to such carrier  
to be carried, where such loss or damage shall have arisen from  
the negligence or a criminal act of the carrier or any of his agents-  
or servants.

9. In any suit brought against a common carrier for the-

Suitors against carriers loss, damage, or non-delivery of goods  
for loss not required to prove entrusted to him for carriage, it shall  
negligence, &c. not be necessary for the plaintiff to prove  
that such loss, damage, or non-delivery was owing to the neg-  
ligence or criminal act of the carrier, his servants, or agents.§

10. [*Saving of provisions of Act XVIII. of 1854.*] Repealed  
by the Indian Railways Act (IX. of 1890).

\* See now the Land Acquisition Act (I. of 1894), s. 2.

† S. 7 (so far as it relates to railways) has been repealed by the Indian Railways Act (IX. of 1890), Ch. VII., s. 72.

‡ See now the Land Acquisition Act (I. of 1894), s. 2.

§ This is in accordance with the English common-law.—See *Ross v. Hill*, 2, Com. B. 890; *Richard v. Lond., Brighton, & S. C. Ry. Co.*, 7 Com. B. 839.

**10.\* No suit shall be instituted against a common carrier**

Notice of loss or injury to for the loss of, or injury to, goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

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### SCHEDULE.

Gold and silver coin.	Title-deeds.
Gold and silver in a manufactured or unmanufactured state.	Gold or silver plate, or plated articles.
Precious stones and pearls.	Glass.
Jewellery.	China.
Time-pieces of any description.	Silk in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.
Trinkets.	Shawls and lace.
Bills and hundis.	Cloths and tissues embroidered with the precious metals or of which such metals form part.
Currency-notes of the Government of India, or notes of any Banks, or securities for payment of money, English or foreign.	Articles of ivory, ebony, or sandal-wood.
Stamps and stamped paper.	
Maps, prints, and works of art.	
Writings.	

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\* S. 10 has been added by the Carriers Act (X. of 1899), s. 2. The Carriers Act (III. of 1865), as originally enacted, contained ten sections. The tenth section (saving of provisions of Act XVIII. of 1854) was repealed by the Indian Railways Act (IX. of 1890). The repealed section ran as follows: "10. Nothing in this Act shall affect the provisions contained in the ninth, tenth, and eleventh sections of Act No. XVIII. of 1854 (*relating to Railways in India*)."

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